EVIDENCE MEMORANDUM

Rior court - stat of California

EXHIBIT P

CASE SCE243538

RIOR COURT - STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LE OF ?RNIA, tiff JAMES CUNNI Defendant	CASE NUMBER SCE243538

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CLERK'S CERTIFICATE

I, the Clerk of the Superior Court,

DO CERTIFY:

☐ That the following Superior Court case file contains all the original documents filed in my office in the action on appeal in compliance with California Rules of Court, Rule 5.2.

☐ That the foregoing transcript was provided in part by the appellant/respondent, and these pages are numbered:

☐ Pursuant to California Rules of Court, Rule 5(d), the record on appeal is certified to be a full and true transcript of the record on appeal.

☐ That Notice of Completion has been mailed to counsel for respective parties and copy(ies) of the record made available in compliance with California Rules of Court, Rule 11(b).

☐ That the record on appeal was furnished wholly, or in part, in compliance with California Rules of Court, Rule 5(b)-(d), and conforming with Rule 9; it is therefore transmitted to the reviewing court.

☒ Pursuant to California Rules of Court, Rules 32(c), 37.2(b), 38, the foregoing record is hereby certified to be a full, true and correct transcript on appeal.

Witness my hand and the Seal of said Court.

SUPERIOR COURT ★ SAN DIEGO COUNTY, CA ★

CLERK OF THE SUPERIOR COURT

Dated: May 18, 2005

Clerk, by ________________________, Deputy
Josie Arellano

0001

IN CUSTODY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

JAMES HENRY CUNNINGHAM,
dob 02/16/58, Booking No. 04141108A;
Defendant

CT No. SCE243538
DA No. MAK333

FILED
Clerk of the Superior Court

COMPLAINT-FELONY SEP 15 2004

By: ____________, Deputy

INFORMATION

Date: 9/28/04

CHARGE SUMMARY

Count	Charge	Issue Type	Sentence Range	Special Allegations	Allegation Effect
1	PC459	Felony	2-4-6		
	CUNNINGHAM, JAMES HENRY			PC460	
				PC462(a)	No Probation
				PC667.5(c)(21)	
				PC12022.5(a)	+3-4-10
2	PC245(a)(2)	Felony	2-3-4		
	CUNNINGHAM, JAMES HENRY			PC12022.5(a)	+3-4-10
3	PC12021(a)(1)	Felony	16-2-3		
	CUNNINGHAM, JAMES HENRY				
4	PC12020(a)(1)	Felony	16-2-3		
	CUNNINGHAM, JAMES HENRY				

PC1054.3 — INFORMAL REQUEST FOR DISCOVERY

PC667(b) thru (i) and PC1170.12 — "THREE STRIKES LAW"

The undersigned, certifying upon information and belief, complains that in the County of San Diego, State of California, the Defendant(s) did commit the following crime(s):

CHARGES

COUNT 1 - BURGLARY, RESIDENTIAL

On or about September 12, 2004, JAMES HENRY CUNNINGHAM did unlawfully enter a building with the intent to commit a felony, in violation of PENAL CODE SECTION 459.

And it is further alleged that said burglary was a burglary of an inhabited dwelling house, trailer coach, inhabited portion of a building, within the meaning of PENAL CODE SECTION 460.

And it is further alleged that the defendant is ineligible for probation pursuant to PENAL CODE SECTION 462(a).

And it is further alleged that another person , other than an accomplice, was present in the residence during the commission of burglary, within the meaning of PENAL CODE SECTION 667.5(c)(21).

And it is further alleged that in the commission and attempted commission of the above offense, the defendant JAMES HENRY CUNNINGHAM, personally used a firearm, to wit:a shotgun, within the meaning of PENAL CODE SECTION 12022.5(a).

COUNT 2 - ASSAULT WITH A FIREARM

On or about September 12, 2004, JAMES HENRY CUNNINGHAM did unlawfully commit an assault upon Jose Castro with a firearm, in violation of PENAL CODE SECTION 245(a)(2).

And it is further alleged that in the commission and attempted commission of the above offense, the defendant JAMES HENRY CUNNINGHAM, personally used a firearm, to wit:a shotgun, within the meaning of PENAL CODE SECTION 12022.5(a).

COUNT 3 - POSSESSION OF FIREARM BY A FELON

On or about September 12, 2004, JAMES HENRY CUNNINGHAM did unlawfully own, purchase, receive, and have in his/her possession and under his/her custody and control a firearm, the said defendant having theretofore been duly and legally convicted of a felony, in violation of PENAL CODE SECTION 12021(a)(1).

COUNT 4 - POSSESSION OF A DEADLY WEAPON

On or about September 12, 2004, JAMES HENRY CUNNINGHAM did unlawfully manufacture, cause to be manufactured, import into the State of California, keep for sale, offer and expose for sale, and give, lend, and possess an instrument and weapon of the kind commonly known as a short-barreled shotgun, in violation of PENAL CODE SECTION 12020(a)(1).

PRIORS

JAMES HENRY CUNNINGHAM:

FIRST SERIOUS FELONY PRIOR

And it is further alleged that said defendant, JAMES HENRY CUNNINGHAM, was convicted of the following serious felony(ies), separately brought and tried, which under California law is punishable by imprisonment in state prison, within the meaning of PENAL CODE SECTIONS 667(a)(1), 668, AND 1192.7(c).

Charge	Date of Conviction	Court Number	Court	County	State
PC211	09/28/1983	CR64287	Superior Court	San Diego	CA

STRIKE PRIOR(S)

And it is further alleged pursuant to Penal Code sections 667(b) through (i), 1170.12, and 668 that the defendant, JAMES HENRY CUNNINGHAM, has suffered the following prior conviction(s) and juvenile adjudication(s), which are now serious or violent felonies under California law whether committed in California or elsewhere.

Charge	Date of Conviction	Court Number	Court	County	State
PC211	09/28/1983	CR64287	Superior Court	San Diego	CA

NOTICE: Any defendant named on this complaint who is on criminal probation in San Diego County is, by receiving this complaint, on notice that the evidence presented to the court at the preliminary hearing on this complaint is presented for a dual purpose: the People are seeking a holding order on the charges pursuant to Penal Code Section 872 and simultaneously, the People are seeking a revocation of the defendant's probation, on any and all such probation grants, utilizing the same evidence, at the preliminary hearing. Defenses to either or both procedures should be considered and presented as appropriate at the preliminary hearing.

Pursuant to PENAL CODE SECTION 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by PENAL CODE SECTION 1054.3.

The People reserve the right to amend the accusatory pleading to further allege any and all facts in aggravation in light of Blakely v. Washington (6/24/2004) ___ U.S. ___ [124 S.Ct. 2531, 2004 WL 1402697].

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT, CASE NUMBER CE243538, CONSISTS OF 4 COUNTS.

Executed at El Cajon, County of San Diego, State of California, on September 15, 2004.

COMPLAINANT

INFORMATION

BONNIE M. DUMANIS
District Attorney
County of San Diego
State of California
by:

9/28/04
Date

Deputy District Attorney

J005

DEPT. NO. 12

CLERK A. Narducci

CASE NO. SCE243538

CASE NAME People VS Cunningham

COUNSEL
Name(s) and address(es)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
EXHIBIT LIST

COURT USE ONLY
FILED
Clerk of the Superior Court
SEP 28 2004
By: Deputy
EL CAJON, CA

NO. TT/△	ID Date	EVID Date	EXHIBIT DESCRIPTION	NO. TT/△	ID Date	EVID Date	EXHIBIT DESCRIPTION
1 TT	9/28/04	9/28/04	One Certification of copy of prior Conviction. ✓				

DISTRIBUTION

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PAGE NO. ______

Date: 9-28-04

Exhibits Custodian

SUPCT 59(Rev. 3-93)

DEPT. NO. 9

CLERK J. NEAL

CASE NO. SCE243538

CASE NAME People VS Cunningham, James

COUNSEL D. Fenk — D. Wally

Name(s) and address(es)

SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO

EXHIBIT LIST

COURT USE ONLY 0006

NO. TT△	ID Date	EVID Date	EXHIBIT DESCRIPTION		NO. TT△	ID Date	EVID Date	EXHIBIT DESCRIPTION	
1 TT	1/5/05	1/5/05	White photo board w/ photographs of apartment	X	A △	1/5/05	Not Rec'd	ECPD statement form of Rebecca Knox	
2 TT	1/5/05		White photo board w/ diagram of apartment	X				Not Received	
3 TT	1/5/05		Sawed off shotgun Stevens Model 820B	X					
4 TT	1/5/05		Brown paper bag containing shotgun shells	X					
5 TT	1/5/05		Stevens 20 CAL. rifle Serial # C816758	X					
6 TT	1/5/05		Winchester 22 CAL. rifle	X					
7 TT	1/5/05		Videotape from Officer Zmijewski's car	X	1	1/4/05	1/4/05	Transcript of 911 call	X
8 TT	1/5/05		Video tape from Officer [illegible] vehicle	X	2	1/6/05	1/6/05	Stipulation re: prior felony	X
9 TT	1/5/05	↓	Tape of 911 call	X					

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PAGE NO. 1

Date: 1-10-05

[signature] Exhibits Custodian

0007

CASE NAME: PEOPLE V. JAMES HENRY CUNNINGHAM

CASE NUMBER: MAK333

COURT NO.: SCE243538

TRANSCRIPT OF 911 TAPE

CALL NO. 1

DATE:

SEPTEMBER 12, 2004

TIME: APPROXIMATELY 10:58 P.M.

LOCATION:

545 NORTH MOLLISON

EL CAJON, CA

TRANSCRIBED BY: VICTORIA DeSIMONE

DATE: NOVEMBER 23, 2004

Court's Ex. 1

Case # SCE243538

Rec'd 1-4-05

Dept 9 Clk [illegible]

LEGEND:

C = CHRISTOPHER COX

R = REBECCA COX

J = JOSE CASTRO

D = DISPATCHER, EL CAJON POLICE DEPARTMENT

* *

D: THE FOLLOWING WILL BE A COPY OF PHONE CONVERSATIONS DATED ON 9-12-04 AT APPROXIMATELY 10:58 PM. IT'S REFERENCE A 4-17-2-45 A 2 CALL AT 545 NORTH MOLLISON. THE PERSON REQUESTING THE INFORMATION IS UH, IRMA FROM THE UH, DISTRICT ATTORNEY'S OFFICE FOR EL CAJON. THE PERSON COMPLETING THE REQUEST IS J.L. VARENAS 85.

(HANGS UP) (PAUSE)

(DIAL TONE) (DIALING)

C: MOTHER FUCKER. (PHONE RINGING) AIN'T NOBODY ____________ OUT HERE.

D: 9-1-1. WHAT IS THE--

C: YEAH,--

D: --EMERGENCY?

C: --I GOT THIS FOOL JUST CAME UP IN MY HOUSE WITH A SHOTGUN TRYIN' TO SCREW THE NIGGER. (BACKGROUND VOICES) OKAY? AND HE AIN'T--

D: WHERE IS THE GUN, SIR?

C: HUH?

D: WHERE IS THE GUN?

C: HE GOT--HE GOT IT IN HIS HAND RIGHT NOW.

D: YOU THINK HE'S WHITE, BLACK, HISPANIC?

C: HE BLACK. YOU ALL KNOW HIM. (BACKGROUND VOICES)

D: WHO IS IT?

C: YEP. YOU GONNA LET ME HAVE IT TONIGHT. I'M GONNA SHOOT YOU IN YOUR FACE, YOU COME UP HERE AGAIN.
D: SIR! WHERE IS--
C: YES.
D: --HE RIGHT NOW?
C: HE'S COMIN' UP THE STAIRS WITH HIS SHOTGUN.
(MALE VOICE IN BACKGROUND)
D: OKAY. HE'S--
C: WITH HIS--WITH HIS--
D: --A BLACK MALE?
C: --SHOTGUN.
D: --ABOUT HOW TALL IS HE?
C: MA'AM, JUST GET THE COPS HERE.
D: YOU NEED TO STAY ON THE LINE. THIS ISN'T THE LINE. TELL ME WHAT HE LOOKS LIKE.
C: UH-HUH. YEAH, HE'S OUT'A HIS RABBIT-ASS MIND. THAT'S WHAT HE IS.
D: WHAT'S HIS NAME?
C: HIS NAME IS UH, JAMES. BUT THEY CALL HIM DA-BOO.
D: JAMES WHAT?
C: I DON'T KNOW. I DON'T KNOW.
D: OKAY. CAN YOU TELL ME WHAT COLOR SHIRT AND PANTS HE'S WEARING?
C: UH, HE'S WEARING A--A--A STRAW HAT, OR WHATEVER.
D: OKAY. WHAT COLOR--
R: HELLO?
D: --SHIRT? -- HELLO?
R: HELLO. HE'S WEARING A HAWAIIAN SHIRT, OKAY? DARK GREY-BLACK PANTS. HE JUST PULLED A FUCKIN' GUN ON ME AND MY HUSBAND AND

MY ROOMMATE. HE SLAMMED MY ROOMMATE TO THE GROUND WITH THE GUN, OKAY?
D: WHERE IS HE RIGHT NOW, MA'AM?
R: HE'S DOWNSTAIRS FUCKIN' YELLIN' OUT HIS TREATS.
D: OKAY. IS HE IN THE MIDDLE OF THE COMPLEX?
R: HE'S-- WHEN YOU COME IN THE FRONT OF THE GATE, I'M TELLIN' YOU YOUR OFFICERS WILL KNOW. THEY KNOW HIM.
D: OKAY. DOES HE LIVE IN THOSE APARTMENTS THERE?
(MALE VOICE YELLING IN BACKGROUND)
R: HE LIVES IN #1. SEE, HE'S DOWNSTAIRS (UNINTELLIGIBLE) (MALE VOICE YELLING IN BACKGROUND) WALKIN' AROUND WITH THE FUCKIN' SHOTGUN. I SWEAR TO GOD, YOU BETTER (MALE VOICE YELLING IN BACKGROUND) GET HIS ASS.
D: OKAY. THIS ISN'T THE WAY. AND THEY'RE ALREADY ON THE WAY. AND IT'S A SHOTGUN?
(MALE VOICE YELLING IN BACKGROUND)
R: SOME LONG FUCKIN' GUN--
D: DID HE SHOOT ANYONE?
(MALE VOICE YELLING IN BACKGROUND)
R: NO. HE FUCKIN' HELD IT TO MY ROOMMATE'S HEAD. HE SLAMMED HIM TO THE GROUND WITH IT. OKAY? HE'S A 60-YEAR-OLD MAN.
(MALE VOICE YELLING IN BACKGROUND)
D: HOW OLD IS THIS PERSON?
R: HE'S LATE 30'S, EARLY 40'S.
D: 30?
R: A BLACK GENTLEMAN, WEARING A HAWAIIAN SHIRT, AND SOM-- HE-- DARK PANTS. OFFICERS KNOW HIM.
D: AND HIS FIRST NAME IS JAMES?

R: JAMES.
(MALE VOICE YELLING IN BACKGROUND)
D: WAS ANYONE HURT?
(MALE VOICE YELLING IN BACKGROUND)
R: KENO? KENO? -- KENO? ARE YOU--
(MALE VOICE YELLING IN BACKGROUND)
R: --WERE YOU HURT?
J:: YEAH.
R: YEAH. THE SIDE OF HIS NECK. YOU CAN SEE IT'S ALL RED FROM--
D: IS--IS IT RED?
R: YEAH. (MALE VOICE IN BACKGROUND) HE'S A 60-YEAR-OLD MAN, YOU KNOW?
(PAUSE)
D: AND THIS JUST OCCURRED?
R: YEAH. MY ROOM--
D: WHAT'S-- WHAT'S THE VICTIM'S NAME? WHAT'S HIS NAME?
R: UM, -- JOSE.
D: WHAT'S JOSE'S LAST NAME?
R: CASTRO.
(PAUSE)
D: OKAY. AND HIS HAS A MARK ON HIS NECK?
R: YEAH. HE PUSHED HIM TO THE GROUND WITH THE GUN.
D: WHERE IS THE PERSON WITH THE GUN RIGHT NOW?
R: HE'S DOWNSTAIRS IN THE PARKING LOT.
D: OKAY. CAN YOU SEE HIM?
R: CAN YOU SEE HIM GO THOUGH-- WHERE-- THEY WANT TO KNOW.
(MALE VOICE IN BACKGROUND)
R: RIGHT DOWN TO HIS APARTMENT. #1.

(MALE VOICE IN BACKGROUND)

D: OKAY. JUST TELL ME WHERE HE IS. AND WE'VE GOT HELP ON THE WAY RIGHT NOW. -- IF HE MOVES, -- WHERE IS-- IS THE GUN IN HIS HAND?

R: JUST-- WAIT-- THEY NEED TO KNOW LIKE, WHERE HE IS AND IF THE GUN IS STILL IN HIS HAND?

C: IT'S IN HIS HAND.

D: OKAY. WHERE IS HE THOUGH? THE OFFICERS NEED TO KNOW THAT.

C: HE'S DOWN-- OUT IN THE FUCKIN' PARKING LOT.

D: OKAY. SO AS FAR AS YOU CAN TELL,-- DID HE JUST LEAVE?

R: UM, -- HE MIGHT BE BACK IN HIS HOUSE.

D: OKAY. YOU CAN'T SEE HIM ANYMORE? 'CAUSE I HAVE ANOTHER SUBJECT SAYING THAT HE LEFT THE COMPLEX.

R: OH, HE MIGHT HAVE. HE MIGHT HAVE.

D: DO YOU KNOW WHAT KIND OF CAR HE DRIVES?

R: YEAH, HE DRIVE A LITTLE BLUE -- I THINK IT'S A TOYOTA TRUCK WITH UM, -- LIKE WITH-- IT MIGHT HAVE A RACK ON IT, THOUGH I'M NOT SURE.

(PAUSE)

D: OKAY. SO THAT'S THE VEHICLE HE DRIVES?

R: YEAH, AND I DON'T SEE HIS TRUCK HERE.

(PAUSE)

D: OKAY. AND, SO NO SHOTS WERE FIRED, CORRECT?

R: NO.

(PAUSE)

D: OKAY.

R: AND I-- I THINK I HEAR HIM, BUT --

D: WHAT IS YOUR NAME, MA--I THINK THEY'RE FOLLOWING HIM ON THE FREEWAY RIGHT NOW. -- I'M SORRY. WHAT'S YOUR NAME?

R: REBECCA.

D: OKAY. YEAH, THEY'RE FOLLOWING THE RIGHT SUBJECT RIGHT NOW. WHAT'S YOUR LAST NAME, REBECCA?
R: KNOX, K-N-O-X.
D: K-N-O-X?
R: THEY GOT HIM. THEY SAID THEY'RE FOLLOWING HIM.
D: YEAH. THEY GOT HIM-- YOU CAN HEAR 'EM?
R: YEAH.
D: IT'S K-N-O-X? IS THAT--
R: YES.
D: --CORRECT?
R: UH-HUH.
D: AND DO YOU LIVE IN APARTMENT #4 AS WELL?
R: YES, I DO.
D: OKAY. WELL, WE-- THERE SHOULD BE AN OFFICER SENT THERE TO CONTACT YOU --
R: OKAY.
D: --UM, -- (MALE VOICE YELLING IN BACKGROUND) BUT YOU CAN HEAR THAT THEY'RE FOLLOWING HIM RIGHT NOW. IS HE-- WHOSE THE PERSON YELLING IN THE BACKGROUND?
R: MY HUSBAND.
D: IS-- WAS HE -- ALSO HURT? IS THAT JOSE?
R: NO. JOSE IS UM, MY 60-YEAR-OLD ROOMMATE.
D: OKAY. AND THEN, THAT'S YOUR HUSBAND. AND WAS YOUR HUSBAND HURT AT ALL?
R: NO.
D: OKAY.
R: WHEN HE PULLED THE GUN OUT, HE PULLED IT ON MY HUSBAND. MY HUSBAND WENT IN THE ROOM AND GOT A BAT. AND -- UM, -- MY-- MY

ROOMMATE WENT TO GRAB THE PHONE, AND THAT'S WHEN HE PULLED THE GUN ON HIM.
D: OKAY. I SEE, AND SO HE BROUGHT IT UPSTAIRS AND --
R: RIGHT.
D: --PUSHED HIM TO THE FLOOR, PUT IT TO HIS NECK --
R: HE LIKE, WENT FORWARD, SO I MEAN, -- (MALE VOICE IN BACKGROUND AND SIRENS) CHRISTOPHER? I'M TRYING TO TALK.
D: OKAY. (MALE VOICE IN BACKGROUND)
R: ALRIGHT.
D: ALRIGHT, WELL THE -- THEY'RE FOLLOWING HIM--
R: OKAY.
D: --RIGHT NOW, SO --
R: ALRIGHT.
D: --THEY'LL BE WITH YOU SHORTLY, OKAY?
R: OKAY. THANK YOU.
D: OKAY. THANKS. BYE-BYE.
(HANGS UP)
--END OF TRANSCRIPTION--

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

FILED
Clerk of the Superior Court
JAN - 5 2005
Deputy
EAST COUNTY DIVISION

The People of the State of California **Plaintiff** **VS.** **JAMES CUNNINGHAM** **Defendant**	**CASE NO. SCE243538**

JURY INSTUCTIONS

GIVEN

REFUSED

WITHDRAWN

DEPT. NO. 9

CLERK J. NEAL

CASE NO. SCE243538

CASE NAME People vs Cunningham, James

COUNSEL D. Clerk / D. Nulley
Name(s) and address(es)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
EXHIBIT LIST

COURT USE ONLY
0006

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PAGE NO. 1

Date: 1-10-05

[signature]
Exhibits Custodian

SDSC CIV-59(Rev. 3-93)

0007

CASE NAME: PEOPLE V. JAMES HENRY CUNNINGHAM
CASE NUMBER: MAK333
COURT NO.: SCE243538

TRANSCRIPT OF 911 TAPE

CALL NO. 1

DATE:

SEPTEMBER 12, 2004

TIME: APPROXIMATELY 10:58 P.M.

LOCATION:

545 NORTH MOLLISON
EL CAJON, CA

TRANSCRIBED BY: VICTORIA DeSIMONE
DATE: NOVEMBER 23, 2004

Court's Ex. 1
Case # SCE243538
Rec'd 1-4-05
Dept 9 Clk [signature]

LEGEND:

C = CHRISTOPHER COX

R = REBECCA COX

J = JOSE CASTRO

D = DISPATCHER, EL CAJON POLICE DEPARTMENT

* *

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(HANGS UP) (PAUSE)

(DIAL TONE) (DIALING)

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R: HE'S-- WHEN YOU COME IN THE FRONT OF THE GATE, I'M TELLIN' YOU YOUR OFFICERS WILL KNOW. THEY KNOW HIM.

D: OKAY. DOES HE LIVE IN THOSE APARTMENTS THERE?

(MALE VOICE YELLING IN BACKGROUND)

R: HE LIVES IN #1. SEE, HE'S DOWNSTAIRS (UNINTELLIGIBLE) (MALE VOICE YELLING IN BACKGROUND) WALKIN' AROUND WITH THE FUCKIN' SHOTGUN. I SWEAR TO GOD, YOU BETTER (MALE VOICE YELLING IN BACKGROUND) GET HIS ASS.

D: OKAY. THIS ISN'T THE WAY. AND THEY'RE ALREADY ON THE WAY. AND IT'S A SHOTGUN?

(MALE VOICE YELLING IN BACKGROUND)

R: SOME LONG FUCKIN' GUN--

D: DID HE SHOOT ANYONE?

(MALE VOICE YELLING IN BACKGROUND)

R: NO. HE FUCKIN' HELD IT TO MY ROOMMATE'S HEAD. HE SLAMMED HIM TO THE GROUND WITH IT. OKAY? HE'S A 60-YEAR-OLD MAN.

(MALE VOICE YELLING IN BACKGROUND)

D: HOW OLD IS THIS PERSON?

R: HE'S LATE 30'S, EARLY 40'S.

D: 30?

R: A BLACK GENTLEMAN, WEARING A HAWAIIAN SHIRT, AND SOM-- HE-- DARK PANTS. OFFICERS KNOW HIM.

D: AND HIS FIRST NAME IS JAMES?

R: JAMES.
(MALE VOICE YELLING IN BACKGROUND)
D: WAS ANYONE HURT?
(MALE VOICE YELLING IN BACKGROUND)
R: KENO? KENO? -- KENO? ARE YOU--
(MALE VOICE YELLING IN BACKGROUND)
R: --WERE YOU HURT?
J:: YEAH.
R: YEAH. THE SIDE OF HIS NECK. YOU CAN SEE IT'S ALL RED FROM--
D: IS--IS IT RED?
R: YEAH. (MALE VOICE IN BACKGROUND) HE'S A 60-YEAR-OLD MAN, YOU KNOW?
(PAUSE)
D: AND THIS JUST OCCURRED?
R: YEAH. MY ROOM--
D: WHAT'S-- WHAT'S THE VICTIM'S NAME? WHAT'S HIS NAME?
R: UM, -- JOSE.
D: WHAT'S JOSE'S LAST NAME?
R: CASTRO.
(PAUSE)
D: OKAY. AND HIS HAS A MARK ON HIS NECK?
R: YEAH. HE PUSHED HIM TO THE GROUND WITH THE GUN.
D: WHERE IS THE PERSON WITH THE GUN RIGHT NOW?
R: HE'S DOWNSTAIRS IN THE PARKING LOT.
D: OKAY. CAN YOU SEE HIM?
R: CAN YOU SEE HIM GO THOUGH-- WHERE-- THEY WANT TO KNOW.
(MALE VOICE IN BACKGROUND)
R: RIGHT DOWN TO HIS APARTMENT. #1.

(MALE VOICE IN BACKGROUND)
D: OKAY. JUST TELL ME WHERE HE IS. AND WE'VE GOT HELP ON THE WAY RIGHT NOW. -- IF HE MOVES, -- WHERE IS-- IS THE GUN IN HIS HAND?
R: JUST-- WAIT-- THEY NEED TO KNOW LIKE, WHERE HE IS AND IF THE GUN IS STILL IN HIS HAND?
C: IT'S IN HIS HAND.
D: OKAY. WHERE IS HE THOUGH? THE OFFICERS NEED TO KNOW THAT.
C: HE'S DOWN-- OUT IN THE FUCKIN' PARKING LOT.
D: OKAY. SO AS FAR AS YOU CAN TELL,-- DID HE JUST LEAVE?
R: UM, -- HE MIGHT BE BACK IN HIS HOUSE.
D: OKAY. YOU CAN'T SEE HIM ANYMORE? 'CAUSE I HAVE ANOTHER SUBJECT SAYING THAT HE LEFT THE COMPLEX.
R: OH, HE MIGHT HAVE. HE MIGHT HAVE.
D: DO YOU KNOW WHAT KIND OF CAR HE DRIVES?
R: YEAH, HE DRIVE A LITTLE BLUE -- I THINK IT'S A TOYOTA TRUCK WITH UM, -- LIKE WITH-- IT MIGHT HAVE A RACK ON IT, THOUGH I'M NOT SURE.
(PAUSE)
D: OKAY. SO THAT'S THE VEHICLE HE DRIVES?
R: YEAH, AND I DON'T SEE HIS TRUCK HERE.
(PAUSE)
D: OKAY. AND, SO NO SHOTS WERE FIRED, CORRECT?
R: NO.
(PAUSE)
D: OKAY.
R: AND I-- I THINK I HEAR HIM, BUT --
D: WHAT IS YOUR NAME, MA--I THINK THEY'RE FOLLOWING HIM ON THE FREEWAY RIGHT NOW. -- I'M SORRY. WHAT'S YOUR NAME?
R: REBECCA.

D: OKAY. YEAH, THEY'RE FOLLOWING THE RIGHT SUBJECT RIGHT NOW. WHAT'S YOUR LAST NAME, REBECCA?

R: KNOX, K-N-O-X.

D: K-N-O-X?

R: THEY GOT HIM. THEY SAID THEY'RE FOLLOWING HIM.

D: YEAH. THEY GOT HIM-- YOU CAN HEAR 'EM?

R: YEAH.

D: IT'S K-N-O-X? IS THAT--

R: YES.

D: --CORRECT?

R: UH-HUH.

D: AND DO YOU LIVE IN APARTMENT #4 AS WELL?

R: YES, I DO.

D: OKAY. WELL, WE-- THERE SHOULD BE AN OFFICER SENT THERE TO CONTACT YOU --

R: OKAY.

D: --UM, -- (MALE VOICE YELLING IN BACKGROUND) BUT YOU CAN HEAR THAT THEY'RE FOLLOWING HIM RIGHT NOW. IS HE-- WHOSE THE PERSON YELLING IN THE BACKGROUND?

R: MY HUSBAND.

D: IS-- WAS HE -- ALSO HURT? IS THAT JOSE?

R: NO. JOSE IS UM, MY 60-YEAR-OLD ROOMMATE.

D: OKAY. AND THEN, THAT'S YOUR HUSBAND. AND WAS YOUR HUSBAND HURT AT ALL?

R: NO.

D: OKAY.

R: WHEN HE PULLED THE GUN OUT, HE PULLED IT ON MY HUSBAND. MY HUSBAND WENT IN THE ROOM AND GOT A BAT. AND -- UM, -- MY-- MY

ROOMMATE WENT TO GRAB THE PHONE, AND THAT'S WHEN HE PULLED THE GUN ON HIM.

D: OKAY. I SEE, AND SO HE BROUGHT IT UPSTAIRS AND --

R: RIGHT.

D: --PUSHED HIM TO THE FLOOR, PUT IT TO HIS NECK --

R: HE LIKE, WENT FORWARD, SO I MEAN, -- (MALE VOICE IN BACKGROUND AND SIRENS) CHRISTOPHER? I'M TRYING TO TALK.

D: OKAY. (MALE VOICE IN BACKGROUND)

R: ALRIGHT.

D: ALRIGHT, WELL THE -- THEY'RE FOLLOWING HIM--

R: OKAY.

D: --RIGHT NOW, SO --

R: ALRIGHT.

D: --THEY'LL BE WITH YOU SHORTLY, OKAY?

R: OKAY. THANK YOU.

D: OKAY. THANKS. BYE-BYE.

(HANGS UP)

--END OF TRANSCRIPTION--

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

FILED
Clerk of the Superior Court
JAN - 5 2005
Deputy
EAST COUNTY DIVISION

The People of the State of California Plaintiff VS. JAMES CUNNINGHAM Defendant	CASE NO. SCE243538

JURY INSTUCTIONS

GIVEN

REFUSED

WITHDRAWN

CALJIC 1.00

RESPECTIVE DUTIES OF JUDGE AND JURY

Members of the Jury:

You have heard all the evidence and the arguments of the attorneys, and now it is my duty to instruct you on the law that applies to this case. The law requires that I read the instructions to you. You will have these instructions in written form in the jury room to refer to during your deliberations.

You must base your decision on the facts and the law.

You have two duties to perform. First, you must determine what facts have been proved from the evidence received in the trial and not from any other source. A "fact" is something proved by the evidence or by stipulation. A stipulation is an agreement between attorneys regarding the facts. Second, you must apply the law that I state to you, to the facts, as you determine them, and in this way to arrive at your verdict.

You must accept and follow the law as I state it to you, regardless of whether you agree with the law. If anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions.

You must not be influenced by pity for or prejudice against a defendant. You must not be biased against a defendant because he has been arrested for this offense, charged with a crime, or brought to trial. None of these circumstances is evidence of guilt and you must not infer or assume from any or all of them that a defendant is more likely to be guilty than not guilty. You must not be influenced by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the People and a defendant have a right to expect that you will conscientiously consider and weigh the evidence, apply the law, and reach a just verdict regardless of the consequences.

Exact copy of CALJIC No. 1.00, except adaptations.

CALJIC 1.01

INSTRUCTIONS TO BE CONSIDERED AS A WHOLE

If any rule, direction or idea is repeated or stated in different ways in these instructions, no emphasis is intended and you must not draw any inference because of its repetition. Do not single out any particular sentence or any individual point or instruction and ignore the others. Consider the instructions as a whole and each in light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

Exact copy of CALJIC No. 1.01, except adaptations.

CALJIC 1.02

STATEMENTS OF COUNSEL--EVIDENCE STRICKEN OUT--INSINUATIONS OF QUESTIONS--STIPULATED FACTS

Statements made by the attorneys during the trial are not evidence. However, if the attorneys have stipulated or agreed to a fact, you must regard that fact as proven as to the party or parties making the stipulation.

If an objection was sustained to a question, do not guess what the answer might have been. Do not speculate as to the reason for the objection.

Do not assume to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it helps you to understand the answer.

Do not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken by the court; treat it as though you had never heard of it.

Exact copy of CALJIC No. 1.02, except adaptations.

CALJIC 1.03 (1998 Revision)

JUROR FORBIDDEN TO MAKE ANY INDEPENDENT INVESTIGATION

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source.

You must not independently investigate the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works or persons for additional information.

You must not discuss this case with any other person except a fellow juror, and then only after the case is submitted to you for your decision and only when all twelve jurors are present in the jury room.

Exact copy of CALJIC No. 1.03.

CALJIC 1.05

JUROR'S USE OF NOTES

You have been given notebooks and pencils. Leave them on your seat in the jury room when you leave each day and at each recess. You will be able to take them into the jury room when you deliberate.

Notes are only an aid to memory and should not take precedence over recollection. A juror who does not take notes should rely on his or her recollection of the evidence and not be influenced by the fact that other jurors do take notes. Notes are for the note-taker's own personal use in refreshing his or her recollection of the evidence.

Finally, should any discrepancy exist between a juror's recollection of the evidence and a juror's notes, or between one juror's recollection and that of another, you may request that the reporter read back the relevant testimony which must prevail.

Exact copy of CALJIC No. 1.05, except adaptations.

CALJIC 2.00

DIRECT AND CIRCUMSTANTIAL
EVIDENCE--INFERENCES

Evidence consists of testimony of witnesses, writings, material objects, or anything presented to the senses and offered to prove the existence or non-existence of a fact.

Evidence is either direct or circumstantial.

Direct evidence is evidence that directly proves a fact. It is evidence which by itself, if found to be true, establishes that fact.

Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

It is not necessary that facts be proved by direct evidence. They may be proved also by circumstantial evidence or by a combination of direct and circumstantial evidence. Both direct and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.

Exact copy of CALJIC No. 2.00.

CALJIC 3.31

CONCURRENCE OF ACT AND SPECIFIC INTENT

In the crime charged in Count I ******** , there must exist a union or joint operation of act or conduct and a certain specific intent in the mind of the perpetrator. Unless this specific intent exists the crime to which it relates is not committed.

[redacted]s.

The crime of ***** BURGLARY requires the specific intent to *****. COMMIT A FELONY INSIDE A STRUCTURE UPON ENTERING IT.

Exact copy of CALJIC No. 3.31, except adaptations.

0024

CALJIC 2.02

SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE
TO PROVE SPECIFIC INTENT OR MENTAL STATE

The specific intent [redacted] with which an act is done may be shown by the circumstances surrounding the commission of the act. However, you may not find the defendant guilty of the crime charged in Count **** to be true, unless the proved circumstances are not only (1) consistent with the theory that the defendant had the required specific intent [redacted] but (2) cannot be reconciled with any other rational conclusion. [redacted].

Also, if the evidence as to any specific intent [redacted] permits two reasonable interpretations, one of which points to the existence of the specific intent [redacted] and the other to its absence, you must adopt that interpretation which points to its absence. If, on the other hand, one interpretation of the evidence as to the specific intent [redacted] appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable.

Exact copy of CALJIC No. 2.02, except adaptations.

CALJIC 2.03

CONSCIOUSNESS OF GUILT--FALSEHOOD

If you find that before this trial the defendant made a willfully false or deliberately misleading statement concerning the crimes for which he is now being tried, you may consider that statement as a circumstance tending to prove a consciousness of guilt. However, that conduct is not sufficient by itself to prove guilt, and its weight and significance, if any, are for you to decide.

Exact copy of CALJIC No. 2.03, except adaptations.

CALJIC 2.11

PRODUCTION OF ALL AVAILABLE
EVIDENCE NOT REQUIRED

Neither side is required to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events. Neither side is required to produce all objects or documents mentioned or suggested by the evidence.

Exact copy of CALJIC No. 2.11.

0027

WITNESS

[redacted] REPORTS—INADMISSIBLE

Evidence has been received pertaining to written reports prepared by one or more of the [redacted] witnesses in this case. The actual physical copies of these reports are not admissible evidence and may not be offered by either party to this case. You should draw no inferences from the fact the actual physical copies of these reports were not marked, offered or received into evidence. You are, however, to evaluate any testimony related to these reports in the same manner as you evaluate all other testimony in this matter.

CALJIC 2.13

PRIOR CONSISTENT OR INCONSISTENT STATEMENTS AS EVIDENCE

Evidence that at some other time a witness made a statement or statements that are inconsistent or consistent with his or her testimony in this trial, may be considered by you not only for the purpose of testing the credibility of the witness, but also as evidence of the truth of the facts as stated by the witness on that former occasion.

If you disbelieve a witness's testimony that he or she no longer remembers a certain event, that testimony is inconsistent with a prior statement or statements by him or her describing that event.

Exact copy of CALJIC No. 2.13, except adaptations.

CALJIC 2.20 (2000 Revision)

BELIEVABILITY OF WITNESS

Every person who testifies under oath [or affirmation] is a witness. You are the sole judges of the believability of a witness and the weight to be given the testimony of each witness.

In determining the believability of a witness you may consider anything that has a tendency to prove or disprove the truthfulness of the testimony of the witness, including but not limited to any of the following:

The extent of the opportunity or ability of the witness to see or hear or otherwise become aware of any matter about which the witness has testified;

The ability of the witness to remember or to communicate any matter about which the witness testified;

The character and quality of that testimony;

The demeanor and manner of the witness while testifying;

The existence or nonexistence of a bias, interest, or other motive;

The existence or nonexistence of any fact testified to by the witness;

The attitude of the witness toward this action or toward the giving of testimony[.][;]

[redacted]

[redacted]

[redacted]

[The witness' prior conviction of a felony][;]

[redacted]

CALJIC 2.21.1 (2001 Revision)

DISCREPANCIES IN TESTIMONY

Discrepancies in a witness's testimony or between a witness's testimony and that of other witnesses, if there were any, do not necessarily mean that [any] [a] witness should be discredited. Failure of recollection is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or a transaction often will see or hear it differently. You should consider whether a discrepancy relates to an important matter or only to something trivial.

Exact copy of CALJIC No. 2.21.1.

CALJIC 2.21.2

WITNESS WILLFULLY FALSE

A witness, who is willfully false in one material part of his or her testimony, is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you believe the probability of truth favors his or her testimony in other particulars.

Exact copy of CALJIC No. 2.21.2.

CALJIC 2.22

WEIGHING CONFLICTING TESTIMONY

You are not bound to decide an issue of fact in accordance with the testimony of a number of witnesses, which does not convince you, as against the testimony of a lesser number or other evidence, which appeals to your mind with more convincing force. You may not disregard the testimony of the greater number of witnesses merely from caprice, whim or prejudice, or from a desire to favor one side against the other. You must not decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. The final test is not in the relative number of witnesses, but in the convincing force of the evidence.

Exact copy of CALJIC No. 2.22, except adaptations.

CALJIC 2.23. BELIEVABILITY OF WITNESS--CONVICTION OF A FELONY

[redacted]

The fact that a witness has been convicted of a felony, if this is a fact, may be considered by you only for the purpose of determining the believability of that witness. The fact of a conviction does not necessarily destroy or impair a witness's believability. It is one of the circumstances that you may consider in weighing the testimony of that witness.

CALJIC 2.27

SUFFICIENCY OF TESTIMONY
OF ONE WITNESS

You should give the testimony of a single witness whatever weight you think it deserves. Testimony by one witness which you believe concerning any fact is sufficient for the proof of that fact. You should carefully review all the evidence upon which the proof of that fact depends.

Exact copy of CALJIC No. 2.27, except adaptations.

CALJIC 2.52

FLIGHT AFTER CRIME

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding whether a defendant is guilty or not guilty. The weight to which this circumstance is entitled is a matter for you to decide.

CALJIC 2.71

ADMISSION--DEFINED

An admission is a statement made by the defendant which does not by itself acknowledge his guilt of the crimes for which the defendant is on trial, but which statement tends to prove his guilt when considered with the rest of the evidence.

You are the exclusive judges as to whether the defendant made an admission, and if so, whether that statement is true in whole or in part.

Evidence of an oral admission of the defendant not made in court should be viewed with caution.

Exact copy of CALJIC No. 2.71, except adaptations.

CALJIC 2.72

CORPUS DELICTI MUST BE PROVED
INDEPENDENT OF ADMISSION

No person may be convicted of a criminal offense unless there is some proof of each element of the crime independent of any admission made by him outside of this trial.

The identity of the person who is alleged to have committed a crime is not an element of the crime nor is the degree of the crime. The identity may be established by an admission.

Exact copy of CALJIC No. 2.72, except adaptations.

CALJIC 2.90

PRESUMPTION OF INNOCENCE--
REASONABLE DOUBT--BURDEN OF PROOF

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to a verdict of not guilty. This presumption places upon the People the burden of proving him guilty beyond a reasonable doubt.

Reasonable doubt is defined as follows: It is not a mere possible doubt; because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge.

Exact copy of CALJIC No. 2.90, except adaptations.

CALJIC 3.30

CONCURRENCE OF ACT AND
GENERAL CRIMINAL INTENT

2-3-4

In the crimes charged in Counts *** namely, ******, there must exist a union or joint operation of act or conduct and general criminal intent. General intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is unlawful.

Exact copy of CALJIC No. 3.30, except adaptations.

CALJIC 4.71

PROOF NEED NOT SHOW
EXACT TIME OF CRIME

When, as in this case, it is alleged that the crime charged was committed "on or about" a certain date, if you find that the crime was committed, it is not necessary that the proof show that it was committed on that precise date; it is sufficient if the proof shows that the crime was committed on or about that date.

Exact copy of CALJIC No. 4.71.

CALJIC 14.50

BURGLARY--DEFINED

(Pen. Code, § 459)

Defendant is accused in Count 1 of having committed the crime of burglary, a violation of section 459 of the Penal Code.

Every person who enters any building with the specific intent to commit a felony is guilty of the crime of burglary in violation of Penal Code section 459.

A building is a structure.

It does not matter whether the intent with which the entry was made was thereafter carried out.

In order to prove this crime, each of the following elements must be proved:

1. A person entered a building; and

2. At the time of the entry, that person had the specific intent to commit the crime of Assault with a deadly weapon.

Exact copy of CALJIC No. 14.50, except adaptations.

CALJIC 14.51

FIRST AND SECOND DEGREE BURGLARY--DEFINED

(Pen. Code, § 460)

If you should find the defendant guilty of burglary, you must determine the degree thereof and state that degree in your verdict.

There are two degrees of burglary. Every burglary of an inhabited dwelling house is burglary of the first degree.

All other kinds of burglary are of the second degree.

Exact copy of CALJIC No. 14.51, except adaptations.

CALJIC 14.52

BURGLARY--INHABITED DWELLING--DEFINED

An inhabited dwelling house is a structure which is currently used as a dwelling whether occupied or not. It is inhabited although the occupants are temporarily absent.

Exact copy of CALJIC No. 14.52, except adaptations.

CALJIC 9.02

ASSAULT WITH A DEADLY WEAPON

(Pen. Code, § 245, subds. (a)(2))

Defendant is accused in Count 2 of having violated section 245, subdivision (a)(2) of the Penal Code, a crime.

Every person who commits an assault upon the person of another with a firearm is guilty of a violation of section 245, subdivision (a)(2) of the Penal Code, a crime.

A "deadly weapon" is any object, instrument, or weapon which is used in such a manner as to be capable of producing, and likely to produce, death or great bodily injury.

A firearm includes a shotgun.

In order to prove this crime, each of the following elements must be proved:

1. A person was assaulted; and
2. The assault was committed with a firearm.

Exact copy of CALJIC No. 9.02, except adaptations.

CALJIC 9.00

ASSAULT--DEFINED

In order to prove an assault, each of the following elements must be proved:

1. A person willfully committed an act which by its nature would probably and directly result in the application of physical force on another person;

2. The person committing the act was aware of facts that would lead a reasonable person to realize that as a direct, natural and probable result of this act that physical force would be applied to another person; and

3. At the time the act was committed, the person committing the act had the present ability to apply physical force to the person of another.

The word "willfully" means that the person committing the act did so intentionally. However, an assault does not require an intent to cause injury to another person, or an actual awareness of the risk that injury might occur to another person.

To constitute an assault, it is not necessary that any actual injury be inflicted. However, if an injury is inflicted it may be considered in connection with other evidence in determining whether an assault was committed.

Exact copy of CALJIC No. 9.00, except adaptations.

CALJIC 9.00.1 (2004 Revision)

ASSAULT--CONDITIONAL THREAT

An assault includes a conditional threat to apply physical force upon another, providing that:

1. The threat commands the immediate performance of some act which the threatening party has no legal right to demand;

2. The threat is made with the intention of compelling performance of that act by

the application of physical force;

3. The person making the threat has placed himself physically in a position to inflict such physical force; and

4. That person has proceeded as far as it is necessary to go in order to carry out his intention.

Exact copy of CALJIC No. 9.00.1, except adaptations.

CALJIC 9.01

ASSAULT--PRESENT ABILITY
TO COMMIT INJURY NECESSARY

A necessary element of an assault is that the person committing the assault have the present ability to apply physical force to the person of another. This means that at the time of the act which by its nature would probably and directly result in the application of physical force upon the person of another, the perpetrator of the act must have the physical means to accomplish that result. If there is this ability, "present ability" exists even if there is no injury.

Exact copy of CALJIC No. 9.01.

CALJIC 12.44

FIREARM--POSSESSION BY PERSON CONVICTED
OF A FELONY--STATUS STIPULATED

(Pen. Code, §§12021, subd. (a)(1)

Defendant is accused in Count 3 of having violated section 12021, subd. (a)(1) of the Penal Code, a crime.

Every person who, having previously been convicted of a felony, owns, purchases, receives, or has in his possession or under his custody or control any pistol, revolver, or other firearm is guilty of a violation of section 12021, subdivision (a)(1)of the Penal Code, a crime.

In this case, the previous felony conviction has already been established by stipulation so that no further proof of that fact is required. You must accept as true, the existence of this previous felony conviction.

In order to prove this crime, each of the following elements must be proved:

1. The defendant had in his possession a shotgun; and
2. The defendant had knowledge of the presence of the shotgun.

Exact copy of CALJIC No. 12.44, except adaptations.

CALJIC 12.40

ILLEGAL POSSESSION OF CERTAIN WEAPONS OR EXPLOSIVES

(Pen. Code, § 12020, subd. (a)(1)

Defendant is accused in Count 4 of having violated section 12020, subdivision (a) (1) of the Penal Code, a crime.

Every person who possesses a short-barreled shotgun is guilty of a violation of Penal Code section 12020, subdivision (a)(1), a crime.

A short-barreled shotgun means any of the following: (A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length OR (B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

In order to prove this crime, each of the following element must be proved:

1. A person possessed a short-barreled shotgun.

Exact copy of CALJIC No. 12.40, except adaptations.

CALJIC 17.19

PERSONAL USE OF FIREARM

(Pen. Code, §§ 12022.5, subd. (a)

It is alleged in Counts 1 and 2 that the defendant personally used a firearm during the commission of the crime charged.

If you find the defendant guilty of one or more of the crimes charged, you must determine whether the defendant personally used a firearm in the commission of those felonies.

The word "firearm" includes a shotgun. The "firearm" need not be operable.

The term "personally used a firearm," as used in this instruction, means that the defendant must have intentionally displayed a firearm in a menacing manner, intentionally fired it, or intentionally struck or hit a human being with it.

The People have the burden of proving the truth of this allegation. If you have a reasonable doubt that it is true, you must find it to be not true.

Include a special finding on that question in your verdict, using a form that will be supplied for that purpose.

Exact copy of CALJIC No. 17.19, except adaptations.

CALJIC 17.12

JURY MAY RETURN PARTIAL VERDICT

If you are not satisfied beyond a reasonable doubt that a defendant is guilty of the crime of which he is accused in Court 2, and you unanimously so find, you may convict him of a lesser crime provided you are satisfied beyond a reasonable doubt that he is guilty of that time.

You will be provided with guilty and not guilty verdict forms for the crime charged in Count 2, and lesser crimes thereto. The crime of simple assault is a lesser crime to that of assault with firearm.

Thus, you are to determine whether the defendant is guilty or not guilty of the crime charged in Count 2, or of any lesser crimes. In doing so, you have discretion to choose the order in which you evaluate each crime and consider the evidence pertaining to it. You may find it to be productive to consider and reach tentative conclusion on all charges and lesser crimes before reaching any final verdicts.

Disregard the instruction previously given which requires that you return but one verdict form as to Count 2.

Before you return any final or formal verdict, you must be guided by the following:

1. If you unanimously find the defendant guilty of the crime of which he is accused in Count 2, your foreperson should sign and date the corresponding verdict form. All other verdict forms as to Count 2 must be left unsigned.

2. If you are unable to reach a unanimous verdict as to the crime of which the defendant is accused in Count 2, do not sign any verdict forms as to Count 2 and report your disagreement to the court.

3. The court cannot accept a guilty verdict on a lesser crime, unless the jury also unanimously finds and returns a signed verdict form of not guilty as to the charged greater crime.

4. If you unanimously agree and find a defendant not guilty of the crime with which he is charged in Count 2, your foreperson should sign and date the not guilty verdict form as to the charged greater crime, and report your disagreement as to the lesser crimes to the court.

CALJIC 17.01. VERDICT MAY BE BASED ON ONE OF A NUMBER OF UNLAWFUL ACTS

[redacted]

The defendant is accused of having committed the crime of assault with a firearm in Count 2. The prosecution has introduced evidence for the purpose of showing that there is more than one act upon which a conviction on Count 2 may be based. Defendant may be found guilty if the proof shows beyond a reasonable doubt that he committed any one or more of the acts. However, in order to return a verdict of guilty to Count 2, all jurors must agree that he committed the same act. It is not necessary that the particular act agreed up on be stated in your verdict.

CALJIC 17.30

JURY NOT TO TAKE CUE FROM THE JUDGE

I have not intended by anything I have said or done, or by any questions that I may have asked, or by any ruling I may have made, to intimate or suggest what you should find to be the facts, or that I believe or disbelieve any witness.

If anything I have done or said has seemed to so indicate, you will disregard it and form your own conclusion.

Exact copy of CALJIC No. 17.30.

CALJIC 17.31

ALL INSTRUCTIONS NOT
NECESSARILY APPLICABLE

The purpose of the court's instructions is to provide you with the applicable law so that you may arrive at a just and lawful verdict. Whether some instructions apply will depend upon what you find to be the facts. Disregard any instruction which applies to facts determined by you not to exist. Do not conclude that because an instruction has been given I am expressing an opinion as to the facts.

Exact copy of CALJIC No. 17.31.

CALJIC 17.40

INDIVIDUAL OPINION REQUIRED--
DUTY TO DELIBERATE

The People and the defendant are entitled to the individual opinion of each juror.

Each of you must consider the evidence for the purpose of reaching a verdict if you can do so. Each of you must decide the case for yourself, but should do so only after discussing the evidence and instructions with the other jurors.

Do not hesitate to change an opinion if you are convinced it is wrong. However, do not decide any question in a particular way because a majority of the jurors, or any of them, favor that decision.

Do not decide any issue in this case by the flip of a coin, or by any other chance determination.

Exact copy of CALJIC No. 17.40.

CALJIC 17.41

HOW JURORS SHOULD APPROACH THEIR TASK

The attitude and conduct of jurors at all times are very important. It is rarely helpful for a juror at the beginning of deliberations to express an emphatic opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may be aroused, and one may hesitate to change a position even if shown it is wrong. Remember that you are not partisans or advocates in this matter. You are impartial judges of the facts.

Exact copy of CALJIC No. 17.41.

CALJIC 17.42

JURY MUST NOT CONSIDER PENALTY-- NONCAPITAL CASE

In your deliberations do not discuss or consider the subject of penalty or punishment.

That subject must not in any way affect your verdict.

Exact copy of CALJIC No. 17.42.

CALJIC 17.43 (2002 Revision)

JURY DELIBERATIONS

During deliberations, any question or request you may have should be addressed to the Court [on a form that will be provided]. If there is any disagreement as to the actual testimony, you have the right, if you choose, to request a readback by the reporter. You may request a partial or total readback, but any readback should be a fair presentation of that evidence. If a readback of testimony is requested, the reporter will delete objections, rulings, and sidebar conferences so that you will hear only the evidence that was actually presented. Please understand that counsel must first be contacted, and it may take time to provide a [response] [, or] [readback]. Continue deliberating until you are called back into the courtroom.

Exact copy of CALJIC No. 17.43.

CALJIC 17.45

MANNER OF RECORDING INSTRUCTION OF NO SIGNIFICANCE--CONTENT ONLY GOVERNS

The instructions which I am now giving to you will be made available in written form for your deliberations. They must not be defaced in any way.

You will find that the instructions may be typed, printed or handwritten. Portions may have been added or deleted. You must disregard any deleted part of an instruction and not speculate as to what it was or as to the reason for its deletion. You are not to be concerned with the reasons for any modification.

Every part of the text of an instruction, whether typed, printed or handwritten, is of equal importance. You are to be governed only by the instruction in its final wording.

Exact copy of CALJIC No. 17.45.

CALJIC 17.47

ADMONITION AGAINST DISCLOSURE OF JURY BALLOTING

Do not disclose to anyone outside the jury, not even to me or any member of my staff, either orally or in writing, how you may be divided numerically in your balloting as to any issue, unless I specifically direct otherwise.

Exact copy of CALJIC No. 17.47.

CALJIC 17.50 (1997 Revision)

CONCLUDING INSTRUCTION

You shall now retire and select one of your number to act as foreperson. He or she will preside over your deliberations. In order to reach verdicts, all twelve jurors must agree to the decision. As soon as you have agreed upon a verdict, so that when polled each may state truthfully that the verdicts express his or her vote, have them dated and signed by your foreperson and then return with it them to this courtroom. Return any unsigned verdict forms.

When you reach a verdict as to any particular count, place all verdict forms for that count in a sealed envelope which will be held by the Clerk until verdicts on both all counts have been reached. At that time, the sealed verdicts will be returned to the foreperson, and the jury will return with them to this courtroom. Return any unsigned verdict forms.

Exact copy of CALJIC No. 17.50, except adaptations.

CALJIC 17.52

SEPARATION ADMONITION

You will be permitted to separate at the noon and evening recesses. During your absence the courtroom will be locked. You are to return following the recesses at 1:30 p.m. and at 9:00 a.m. on the next succeeding court date. During periods of recess, you must not discuss with anyone any subject connected with this trial, and you must not deliberate further upon the case until all 12 of you are together and reassembled in the jury room. At that time you shall notify the clerk or the bailiff that the jury is reassembled, and then continue your deliberations.

Exact copy of CALJIC No. 17.52, except adaptations.

In the Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

0064

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. JAMES HENRY CUNNINGHAM, Defendant(s)	SC No. SCE243538 DA No. MAK333

FILED
Clerk of the Superior Court
JAN - 6 2005
Deputy
EAST COUNTY DIVISION

VERDICT

We, the jury in the above entitled cause, find the defendant, James Henry Cunningham,

not guilty of the crime of BURGLARY, RESIDENTIAL, in violation
GUILTY / NOT GUILTY
of PENAL CODE SECTION 459, as charged in Count One of the Information.

And we further find that said burglary ______________ a burglary of an
WAS / WAS NOT
inhabited dwelling house, trailer coach, inhabited portion of a building, within the meaning of PENAL CODE SECTION 460, as alleged in Count One of the Information.

And we further find that another person, other than an accomplice,

______________ present in the residence during the commission of burglary, within the
WAS / WAS NOT
meaning of PENAL CODE SECTION 667.5(c)(21), as alleged in Count One of the Information.

And we further find that in the commission and attempted commission of the above offense, the defendant James Henry Cunningham, ______________ personally
DID / DID NOT
use a firearm, to wit: a shotgun, within the meaning of PENAL CODE SECTION 12022.5(a), as alleged in Count One of the Information.

Dated 1/6/05

Foreperson

In the Superior Court of the State of California

0065

IN AND FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

JAMES HENRY CUNNINGHAM,
Defendant(s)

SC No. SCE243538
DA No. MAK333

FILED
Clerk of the Superior Court
JAN - 6 2005
Deputy
EAST COUNTY DIVISION

VERDICT

We, the jury in the above entitled cause, find the defendant, James Henry Cunningham,

Guilty of the crime of ASSAULT WITH A FIREARM, in
GUILTY / NOT GUILTY
violation of PENAL CODE SECTION 245(a)(2), as charged in Count Two of the Information.

And we further find that in the commission and attempted commission of the above offense, the defendant James Henry Cunningham, did personally use
DID / DID NOT
a firearm, to wit: a shotgun, within the meaning of PENAL CODE SECTION 12022.5(a), as alleged in Count Two of the Information.

Dated 1/6/05

Foreperson

In the Superior Court of the State of California 0066
IN AND FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

JAMES HENRY CUNNINGHAM,
Defendant(s)

SC No. SCE243538
DA No. MAK333

FILED
Clerk of the Superior Court
JAN - 6 2005
Deputy
EAST COUNTY DIVISION

VERDICT

We, the jury in the above entitled cause, find the defendant, James Henry Cunningham,

Guilty of the crime of POSSESSION OF FIREARM BY A
GUILTY / NOT GUILTY
FELON, in violation of PENAL CODE SECTION 12021(a)(1), as charged in Count

Three of the Information.

Dated 1/6/05

Foreperson

In the Superior Court of the State of California
IN AND FOR THE COUNTY OF SAN DIEGO

0067

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

JAMES HENRY CUNNINGHAM,
Defendant(s)

SC No. SCE243538
DA No. MAK333

F I L E D
Clerk of the Superior Court
JAN - 6 2005
Deputy
EAST COUNTY DIVISION

VERDICT

We, the jury in the above entitled cause, find the defendant, James Henry Cunningham,

Guilty of the crime of POSSESSION OF A DEADLY WEAPON,
GUILTY / NOT GUILTY

in violation of PENAL CODE SECTION 12020(a)(1), as charged in Count Four of the Information.

Dated 1/6/05

Foreperson

In the Superior Court of the State of California

0068

IN AND FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

JAMES HENRY CUNNINGHAM,
Defendant(s)

SC No. SCE243538
DA No. MAK333

VERDICT

We, the jury in the above entitled cause, find the defendant, James Henry Cunningham,

______________________ of the crime of ASSAULT, in violation of PENAL CODE
GUILTY / NOT GUILTY
SECTION 240, a Lesser Included Offense of Count Two of the Information.

Unsigned.

Dated ______________________ ______________________
Foreperson

SAN DIEGO COUNTY PROBATION DEPARTMENT
ADULT SERVICES
PROBATION OFFICER'S REPORT

0069

FILED
EAST COUNTY DIVISION
2005 JAN 31 AM 10:16
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

THE PEOPLE OF THE STATE OF CALIFORNIA	**COURT NO.:** SCE243538	**DEPT. & JUDGE:** East County Division Superior Court 9 MCGRATH, W
V.	**DA FILE NO.:** MAK33301	**ATTORNEY:** GULLEY, S PD
RN: CUNNINGHAM, JAMES H **CN:** CUNNINGHAM, JAMES HENRY	**HEARING DATE/TIME:** 02/08/2005 01:30 PM	**PROB. CASE NO.:** 561099
AKA: JAMES HENRY COTTEN , EDWARD CUNNINGHAM , JIMMY L CUNNINGHAM , JIM HENRY CUNNINGHAM , JAMES H CUNNINGHAM , JAMES H CUNNINGHAM , JAMES H CUNNINGHAM	**PROBATION OFFICER:** FORREY, ELIZABETH	**PO TELEPHONE:** 619-441-3464
ADDRESS: 5590 LENOX DR SAN DIEGO, CA 921141111	**TELEPHONE NO.:** (691) 582-1814	**BIRTHPLACE/CITIZENSHIP:** SAN DIEGO, California

BIRTH DATE:	AGE:	RACE:	SEX:	HT:	WT:	EYES:	HAIR:
02/16/1956	48	BLACK	M	.511	160	BROWN	BLACK

DRIVER'S LIC. NO.: N6558864 California	**INS NO.:**	**OTHER ID DATA:** Tattoo - TT LT & RT ARMS PIC OF BUTTERFLY, RABBIT AND HEART

DATE OFFENSE COMMITTED: 09/12/2004	**DATE CONVICTED:** 01/10/2005	**HOW:** JURY TRIAL	**CUSTODY STATUS:** In Custody George Bailey GB 5
INVESTIGATING ARRESTING AGENCY: El Cajon PD		**DATE INFO/COMPLAINT FILED:** 09/28/2004	**SDSO NO:** 57035 000103
CII NO.: 05699671	**FBI NO.:** 673204P6	**ARREST REPORT NO.:** 04015263	**BOOKING NO.:** 04141108D

CONVICTED OF:

COUNT 2, PC245(a)(2) ASSAULT WITH A FIREARM/
PC12022.5(a), PERSONAL USE OF A FIREARM (victim :Jose Castro)

COUNT 3, PC12021(a)(1) POSSESSION OF FIREARM BY A FELON

COUNT 4, PC12020(a)(1) POSSESSION OF A DEADLY WEAPON

PRE PLEA AGREEMENT:

N/A. GUILTY BY JURY

RECOMMENDATION: **STATE PRISON**

RELATED COURT DATA:

The Court made findings on the following priors:

PC667(a)(1), First Serious Felony Prior
PC 667(b)-(i)/1170.12/668, Strike Prior.

THE OFFENSE:

SOURCES OF INFORMATION for this section

DISTRICT ATTORNEY FILE

The Probation Officer is aware the Court was present during the trial proceedings and is undoubtedly more familiar with the facts of the offense. The following account is a summation of the facts as made available to the Probation Officer.

Jose Castro, Rebecca Knox and Christopher Knox were all staying in an apartment together at 545 North Mollison, #4, located on the second floor. The defendant, James Cunningham, was residing in apartment #1, located on the first floor. On September 12, 2004 at approximately 4:30 p.m., Jose Castro returned a vacuum to the defendant, that his roommate Rebecca Knox had borrowed. Castro walked down to the defendant's apartment and placed the vacuum on the patio outside the door. Castro then returned to his own apartment upstairs.

A few minutes later, the defendant appeared at the apartment occupied by Castro and the Knox's. He walked inside and accused Castro of stealing his cell phone. Castro denied doing so. The defendant then stated he was going to return to his own apartment to look for the cell phone. He stated if he did not find it, he was going to come back and kill everyone in the apartment.

Approximately forty-five minutes later, the defendant returned to apartment #4 with a shotgun in his hand. Castro and Rebecca Knox were sitting in the front room and Christopher Knox was in the bedroom. After the defendant entered the apartment, he began yelling about his cell phone, pointing the shotgun at Castro. Castro picked up the cordless phone to call the police. The defendant approached Castro, put the shotgun to his neck and pushed Castro up against the wall, using the barrel of the gun as leverage. He then reached down and took the phone out of Castro's hand and told him he was going to kill him. Christopher Knox, who had been in the bedroom, heard the commotion and came out. He was armed with a baseball bat and told the defendant to leave. Before leaving, Cunningham again threatened to kill everyone in the apartment.

The defendant left the apartment, walked down the stairs and out to where his truck was parked. He then left the complex in his car. Police located him driving several blocks away from the complex and pursued the truck. During the chase, the defendant was observed throwing an object out of the truck. The object was later retrieved and determined to be a loaded sawed off- shotgun.

VICTIMS:

RESTITUTION: UNDETERMINED

VICTIM NOTIFIED OF P&S HEARING: X Yes INTENDS TO APPEAR: UNKNOWN

SOURCES OF INFORMATION for this section

STANDARD LETTERS MAILED OUT; ATTEMPTED PHONE CONTACT WITH VICTIMS.

A standard letter was mailed out to the victim's last known residence, informing him of his rights as a victim, requesting restitution information and advising him of today's hearing. Telephone calls were also made to his last known residence and a hotel, where he was believed to have been staying. He has not responded to the written correspondence and all attempts to speak with Mr. Castro have proven unsuccessful. Should any additional information come to light, it will be forwarded to the Court for today's sentencing hearing. Based on all available police reports and follow-ups, it does not appear he was physically injured as a result of the assault.

DEFENDANT'S STATEMENT:

SOURCES OF INFORMATION for this section

VIDEO INTERVIEW WITH THE DEFENDANT ON 1-21-05

The defendant declined to make a written statement regarding his involvement in this offense. During a personal interview, he stated the incident came about due to on-going problems with these particular neighbors. When he first met Rebecca and Christopher Knox, they were good people. They started using drugs and soon there was a lot of traffic in and out of their apartment. Castro didn't really live there, he just stayed there to use drugs. When his money ran out, he would leave. He became aware that they were committing crimes to support their habit. At one point, he loaned Rebecca Knox money and she repaid him with a fraudulent check. He got mad and decided not to deal with them anymore. Soon his property and his kid's toys started disappearing from the outside patio. He warned them that he would turn them in to the authorities if it didn't stop. Shortly thereafter, three unknown persons near the apartment complex assaulted him. They called him a snitch and then punched and kicked him. He had to get sixteen stitches in his head. He is certain they were friends of the victim.

On the day of the incident, he left his apartment and did not return until evening time. He noticed the window screen was pried back and his door was unlocked. His checkbook, cell phone and some of the kid's clothing were missing. When he checked with neighbors, they told him they had seen Rebecca Knox knocking on his door and then saw Castro carrying something from his apartment. "Their story about returning a vacuum was a lie. I gave Rebecca a vacuum cleaner a long time ago, long before all the problems started."

After speaking with the neighbors, he went up to their apartment and asked Castro where his phone was. Castro denied taking it and he (defendant) left. Four or five months earlier he had borrowed a gun from a friend due to gang activity in the neighborhood. He knew as a felon he was not allowed to have a gun but he worried about his children's safety. He kept it locked up in a chest in his bedroom and kept his bedroom door locked.

He took the gun and returned to their apartment to get his cell phone. The door was slightly open but he still knocked. He only brought the gun for protection and he kept it down by his side the entire time. "I know I was wrong for taking the gun up there and I regret that. I didn't verbally threaten anyone and did not hold the gun to Castro's neck. Castro never came out of the kitchen and I never walked more than two feet inside the doorway. All of a sudden, Christopher Knox came out of the bedroom swinging a baseball bat. They were verbally threatening to kick my ass and called me a snitch. I left and drove to my mother's house. I threw the gun out of the window because I was afraid the police might shoot me if they thought I was armed."

"I was wrong for brandishing the gun. I learned my lesson. I am asking for probation consideration. I want to get out and raise my family. I apologize to the Court and everyone involved. It was out of character for me to do that. I feel I have been punished enough. I lost my apartment, my job, my cars and I can't see my kids. I will do probation successfully again."

The defendant was advised that he is absolutely ineligible for probation based on the strike prior finding.

CRIMINAL HISTORY:

SOURCES OF INFORMATION for this section

CII AND FBI DATED 1-18-05; LOCAL RECORDS; CLOSED PROBATION FILE

DATE	AGENCY	CHARGE	DISPOSITION
2-24-76	SDPD	245(b),ADW OF PO X 4	CR36991: 7-26-76, PLED NOLO TO PC 69, RESIST EXEC OFFAS MISD, LIO OF CT 1. 3 YRS FORM PROB. NO COMP/PROB REVKD WT ISSD 12-11-78. 2-22-79, DEFT FTA AND BW ISSD. 3-6-79, PROB REVKD, 365 DYS CUST.

SDPD officers responded to a call regarding a riot at Lincoln High School, following a basketball game. The defendant was identified as one of the suspects who threw rocks and other objects at police. At least one officer was struck by a rock the defendant threw.

4-18-80	SDPD	PC 242, MISD BATTERY X 2	M338391: 3 YRS CT PROB, 10 DAYS PSW, $50 FINE.

8-24-87	SDPD	VC 12500(A), NO LICE VC 24600E, TAILLAMP VIOL VC 4000(A), NO REG VC 40508(A), FTA,	B686060: DEFT 1 YRS CT PROB, 45 DAYS JL, $700 FN.
7-16-83	SDPD	PC 211, ROBBERY X 2 PC 664/211, ATTEMPTED ROBB X 222	CR64287: P/G 1 CT ATTEMPD ROBB 11-10-83. 5 YRS FORM PROB, 365 DYS JL,. PROB REVKD/BW ISSD 10-21-88. 7-6-89, PROB REVKD, REINSTD/MODIFD 365, WAIVE 4019 PC CREDITS. PROB TERMD 9-1-89.

The defendant robbed several women of their purses, threatening great bodily harm if they did not comply. The incident occurred in the Fox Theater, in downtown San Diego at approximately 1:20 a.m.

8-2-92	SDPD	VC 14601.1, DRIVNG ON SUSPND LIC.	T099044: 8-4-92, 3 YRS FORM PROB, 5 DYS CUST, 27 DYS PSW. 10-7-92, NO COMP. PROB REVKD AND BW ISSD 10-19-92.
1-13-93	SDPD	VC 20002(A), HIT AND RUN VC 14601.1(A), DOSL	T116261: 2-9-94, P/G HIT AND RUN. 3 YRS CT PROB.
7-14-93	SDPD	VC 14601.1(A), DOSL	T120182: P/G 2-9-94. 3 YRS CT PROB, 17 DYS JL, $1351 DEFERRED FN. NO COMP, PROB REVKD/WT ISSD 4-29-94, 8-25-94, 12-28-94. REINSTD/MODIFD X 3.
10-14-93	SDPD	PC 12021(A), FELON IN POSS OF FIREARM	CR142535: 2-9-94, P//G AS FEL. 3 YRS FORM PROB, 26 DYS CTS, $200 FN. NO COMP. PROB REVKD 3-8-95. REINSTD/MODIFD 4-28-95 TO INCLUDE 365 CUST.

A loaded handgun was found under the front passenger seat of the defendant's car. He admitted he had purchased the gun from someone who desperately needed to sell the gun for money. He denied knowing the gun was loaded.

3-10-96	SDPD	VC 14601(A), DOSL	T165534: P/G 3-19-97. 3 YRS CT PROB, 4 DYS JL, 30 DYS PSW, $1351 FN. NO COMP, PROB REVKD /WT ISSD 6-10-97, 10-15-97 AND 5-6-99. PROB TERMD 5-20-99.
10-10-97	SDPD	VC 14601.1(A) W/2 PRS	T186363: 3 YRS CT PROB, 40 DYS JL, $1351 DEFERRED FN. NO COMP, PROB REVKD5-6-99. REINSTD/TERMIND 5-20-99.
5-4-99	SDPD	PC 242, MISD BATT, LIO CT 1	M775621: 3 YRS CT PROB, 8 DYS JL. PROB REVKD/REINSTD 10-20-04. REASSIGN HIV TEST. FURTHER PROCEEDINGS 2-10-05 SD-M-CC. **PEND**
9-12-04	ECPD	C2, PC 245(a)(2), ASSLT W/ FIREARM Ct 3, PC 12021(a)(1), POSS OF FIREARM BY FELON Ct 4, PC12020(a)(1), POSS OF DEAD WEAPON PC 667(A)(1), SERIOUS FEL PRIOR PC 667(b)-(i)/1170.12, STRIKE PRIOR	SCE243538: **INSTANT OFFENSE.**

Additional Information: The following police report information, which did not result in a conviction, is being offered for the court's information pursuant to California Rules of Court 411.5(a)(3):

The undersigned is in receipt of SDPD arrest report # 02-107931 dated 2-9-02 that documents the defendant's arrest for Driving under the Influence, Possession of Drug Paraphernalia and Driving without a License. Police responded to a report of shots fired in an alley. Upon arrival, they found a male parked in the middle of the alley, asleep behind the wheel.

He had an open beer in between his legs and he was holding a glass-smoking pipe in his hand. The middle portion of the pipe had white residue in it and the end of the pipe was charred.
After several attempts, officers were able to wake up the subject, identified as James Cunningham. He appeared dazed and confused and officers noted the odor of alcohol on his breath and person. Following his arrest, a syringe was found on the floorboard of the driver's seat. Cunningham was very uncooperative following his arrest and verbally threatened officers. His BAC was .17.

PROBATION AND PAROLE:

SOURCES OF INFORMATION for this section
CLOSED PROBATION FILE; LOCAL RECORDS

As to CR36991:
The defendant was initially granted formal probation in CR36991 on 9-17-76 following a conviction for PC 69, Resisting an Executive Officer. On 12-11-78, probation was revoked and a warrant issued after this department alleged failure to comply. At an evidentiary hearing on 3-6-79, the defendant admitted not reporting and failure to remain law-abiding. He was sentenced to 365 in custody and allowed to serve the majority of his sentence at work furlough. Probation expired on 9-16-79.

As to M338391:
The defendant was initially granted formal probation in M338391 on 9-30-80, following a conviction for misdemeanor battery. On 9-29-82, formal probation reverted to Court Probation until 9-29-83.

As to CR64287:
The defendant was initially granted formal probation in case CR64287 on 11-10-83, following a conviction for PC 664/211, Attempted Robbery. He failed to report and continually drove on a suspended license resulting in tickets and ultimately outstanding warrants. His overall demeanor was described as uncooperative and angry. This department recommended a prison commitment at a violation hearing on 7-6-89. The Court found the defendant in violation and offered him prison or 365 and waiver of his PC 4019 credits. He elected to waive his local credits and was released from custody on 9-1-89 at which time probation terminated.

As to CR142535:
The defendant was initially granted formal probation in case CR142535 on 2-8-94, following a conviction for PC 12021(a), Felon in Possession of a firearm. He appeared for a violation hearing on 4-28-95 after he allegedly failed to report, and failed to pay Court fines. The Court found him in violation and restated and extended probation until 2-7-98. 365 days were stayed pending successful completion of probation. Probation was allowed to expire without further Court intervention.

He has never to prison nor supervised on parole.

PERSONAL DATA:

The following information was offered by the defendant. Unless noted otherwise it has not been verified.

Birth Place and Areas of Residence:
The defendant was born and raised in San Diego.

Current Living Situation:
Following his release from custody, he will most likely reside with his mother on Lenox Drive in San Diego.

Family Relationships:
The defendant is the middle of eleven children. He was brought up in a religious home. There was no abuse and his parents did not use drugs or alcohol. His parents divorced when he was a teen-ager but he maintained good relationships with both his mother and father. He is close to all of his family. They are aware of his arrest and are very upset. His mother is presently raising two of his three minor children.

Marital Status and Dependents:
The defendant has never married. He has three grown children Marquette, 27, Jon-te 24 and Martell age 21. He also has three minor children ages 10, 6 and 3. His mother is raising the 10 and 3 year old. The 6 year old lives with her mother in Sacramento. He claims an excellent relationship with all six of them. He pays $50 in Court-ordered child support to the mother of the 6 year old.

Family Criminal History:
He thinks one of his sisters might have a criminal record but he is not certain.

Acquaintances:
He associates with other family members and fellow employees.

Pro-Social Activities:
The defendant enjoys family life and taking his kids to the park.

Education:
He completed the eleventh grade. He was forced to drop and go to work after learning his girlfriend was expecting their first child.

Military Service:
None

Employment History:
For the last three years, he has worked as a welder and metal fabricator for Automation General, a manufacturer of security gates. He was earning $10 per hour and other benefits. He lost his job as a welder following his arrest in the instant offense. Prior to that, he worked as a construction laborer for Labor Ready. "I have always been employed."

Financial Information:
He denied any major debts and claims no assets.

Psychological and Medical Problems:
He denied any psychological problems.

He has bad teeth and high blood pressure.
He is not on any medication.

Substance Abuse and Treatment History:
Alcohol:
He first experimented with alcohol at age twenty-five. He is a "casual Drinker" and has no more than one or two beers a week, despite an arrest in 2002 for DUI.

Drugs:
He denied past or present use of any controlled substances, despite a 2002 arrest for Possession of Drug Paraphernalia.

Gang Affiliation:
Denied

Immigration Status:
US Citizen

Future Plans:
He would like to get a job and spend time with his kids and family.

COLLATERAL INFORAMTION:
TELEPHONE CONTACT WITH DDA LINK; DEFENSE ATTORNEY S. GULLEY

As this was a jury trial, the undersigned contacted both the Deputy District Attorney and the Defense Attorney for additional facts or findings not brought out in the trial. DDA Link stated the Jury made the right finding of Assault with a Firearm.

A voice message was left with Attorney S. Gulley, asking him to call the undersigned. As of this writing, there has been no direct contact with him.

SENTENCING DATA: As to all Counts, unless specifically designated otherwise:

Possible Circumstances in Mitigation:

Rule 4.423(a)(2): The victim was a provoker of the incident. The defendant claims that friends of the victim had previously assaulted him for reporting illegal activity in the apartment complex. His injuries required sixteen stitches. He felt he needed to defend himself when he went to their apartment to demand his cell phone back and thus armed himself.

Rule 4.408(a): No one was physically injured as a result of the assault.

Rule 4.408(a): The defendant's last felony conviction occurred twelve years ago in 1993.

Possible Circumstances in Aggravation:

Rule 4.421(a)(8): The manner in which the crime was carried out indicates planning. He went to the victim's residence and accused him of stealing his cell phone. When the victim denied having it, the defendant told him he would be back and kill him if he could not find it in his own apartment. He then returned with the loaded shotgun.

Rule 4.421(b)(1): The defendant has engaged in violent conduct that indicates a serious danger to society.

Rule 4.421(b)(2): The defendant's prior convictions as an adult are increasing in seriousness.

Rule 4.421(b)(4): The defendant was on Court probation for misdemeanor battery in M775621 when the crime was committed.

Prison Term Analysis:

The sentencing choices available to the Court for Count 2, Assault with a Firearm are 2, 3 and 4 years. The PC 667(b)-(i) Strike Prior (CR64287) doubles the base terms to 4, 6 and 8 years. Although the mitigants and aggravants are fairly balanced, it appears the defendant is receiving sufficient punishment having been found to have suffered a prior serious felony conviction. Therefore, the recommendation will be for the lower term of 4 years. Count 2 has an additional enhancement, PC 12022.5(a) attached to it, that carries an additional 3, 4 and 10-year penalty, to be served consecutive to any sentence imposed. In considering the mitigating and aggravating circumstances, the undersigned found no reason to deviate from the presumptive middle term. Therefore, an additional four years will be recommended on the above count. Count 2 is selected as the principal term.

The sentencing choices available to the Court for Count 3, PC 12021(a)(1) and Count 4, PC 12020(a)(1) are 16 months, 2 years and 3 years. The PC 667.5(b)-(i), Strike Prior, doubles the base term to 32 months, 4 years and 6 years. Although the mitigants and aggravants are fairly balanced, it appears the defendant is receiving sufficient punishment having been found to have suffered a prior serious felony conviction. Therefore, the recommendation will be for the lower term of 32 months.

In addition, PC 667(a)(1) First Serious Felony Prior (CR64287) carries an additional mandatory consecutive 5- year term. Although this prior conviction is the same as that used for the Strike Prior, the enhancement may be added per People v. Dotson(1997)16 CA4th 547.

654 Issues:

Pursuant to Judicial Council Rule 424, prior to determining whether to impose either concurrent or consecutive sentences on all counts in which the defendant was convicted, the Court shall determine whether the proscription in PC654 against multiple punishments for the same act or omission requires a stay of imposition of sentence on some counts. Count 3 and 4 are viewed as arising from the same set of operative facts. The defendant is a convicted felon and was in possession of a dangerous weapon, specifically a shotgun. Therefore, punishment for Count 4 should be barred per PC 654.

Concurrent vs. Consecutive Sentences:

The undersigned has reviewed Judicial Council Rule 4.425, Criteria affecting Concurrent or Consecutive Sentences. It is the undersigned opinion that Rule 4.425(a)(1) would justify consecutive sentences. The defendant admittedly came into possession of the firearm four or five months prior to the assault. He borrowed the gun from a friend due to gang activity in his neighborhood. He did not obtain the gun with the specific intent of confronting or assaulting the victim. He knew, as a felon, it was not lawful to possess a gun. The crimes and their objectives were predominantly independent of each other.

EVALUATION:
Probation Eligibility:

Rule 4.413(a): Absolutely ineligible for probation pursuant to PC 667(b)-(i)/1170.12/668, Strike Prior,

The defendant is also presumptively ineligible for a grant of probation pursuant to PC 1203(e)(2) deadly weapon use and PC 1203(e)(4), two or more prior felony convictions.
Therefore, circumstances supporting a grant or denial of probation will not be addressed.

Discussion:

Before the Court for sentencing today is forty six year old James Cunningham. He was found guilty by jury of Count 2, PC 245(a)(2), Count 3, PC 12021(a)(1) and Count 4, PC 12020(a)(1). Allegations PC 667(a)(1) and PC 667.5(b)-(i) were found true by the Court.

The defendant threatened the victim with a loaded sawed off shotgun, after he suspected him of stealing his cell phone. The victim has not responded to a letter sent to his last known address.

Although it appears no one was physically injured, holding a loaded gun to someone's head and threatening to kill them is certain to have emotional repercussions.

The defendant claims he armed himself that day, as friends of the victim had previously assaulted him. He got the gun months earlier due to gang activity in the neighborhood and knew it was unlawful to possess it.

The defendant has violence in his past but it is fairly dated. His last felony conviction occurred in 1993 and he successfully completed formal probation in that case. On the other hand, the crime appears to have been premeditated and he was on probation when committing the crime.

Mr. Cunningham became his own worst enemy when he chose to take matters into his own hands and confront the victim with a loaded shotgun. He must now live with the consequences of his criminal actions.

Based on the jury and Court findings, the defendant is absolutely ineligible for probation pursuant to PC 667(b)-(i) and therefore a commitment to state prison is mandatory. Consecutive sentences appear warranted with respect to Counts 2 and 3 and staying the punishment on Count 4 is being recommended pursuant to PC 654.

CUSTODY DATA:

Date Confined	Date Released	Place	Custody Days
09/13/2004	02/08/2005 (In custody)	CJ	~~149~~ 178
		PC 2933.1 credits	22 26
		TOTAL CTS	171 204

RECOMMENDATION:

That probation be denied and the defendant be committed to the Department of Corrections for the term of 14 years, 4 months, with credit for time served of 149 actual days and 22 days PC2933.1 credits, a total of 171 days credit.

That the defendant pay a restitution fine pursuant to PC1202.4(b) in the amount of $1,000, to be paid forthwith or as provided in PC2085.5 and pay an additional restitution fine pursuant to PC1202.45 in the amount of $1,000, to be stayed and remain so unless defendant's parole is revoked.

The defendant submit to DNA testing pursuant to PC 296.

Term Recommendation Breakdown by Count is as Follows:

Crime	Suggested Base Term	Recommended Term	Recommended Stay
Ct. 2, PC245(a)(2) PC 667.5(b)-(i)/1170.12 (CR64287)	Lower- 4 years (base doubled)	4 years	0
PC 12022.5(a)	Middle- ~~4~~ 3 years (mand consec)	~~4~~ 3 years (consec)	0
Ct. 3, PC12021(a)(1) PC 667.5(b)-(i)/1170.12	Lower- 32 Months cc (doubled/consec)	1 yr, 4 months (1/3 of mid, consec)	0
Ct. 4, PC12020(a)(1) PC 667.5(b)-(i)/1170.12	Lower- 32 Months cc (doubled)	0	32 months per PC 654
PC 667(a)(1) First Serious Felony Prior	5 years (consec)	5 years (consec)	0

TOTAL TERM: **~~14~~ yrs, 4 mos.** 12

Respectfully submitted,

Vincent J. Iaria
CHIEF PROBATION OFFICER

By:

ELIZABETH FORREY
Deputy Probation Officer
619-441-3464

Approved:
THOMAS CALDWELL
SUPERVISOR

I have read and considered the foregoing report.

JUDGE OF THE SUPERIOR COURT

EF/01/25/05

0083

FILED
Clerk of the Superior Court
MAR - 7 2005
By: J. NEAL, Deputy

STEVEN J. CARROLL
Public Defender
County of San Diego
STACY D. GULLEY
Deputy Public Defender
State Bar No. 110660
250 East Main St., Suite 600
El Cajon, California 92020
Telephone: (619) 441-4618

Attorneys for Defendant
JAMES CUNNINGHAM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. JAMES CUNNINGHAM, Defendant.	Case No.: SCE 243538 D.A. No.: MAK 33301 **STATEMENT IN MITIGATION AND IN SUPPORT OF PROBATION [PENAL CODE § 1170(b) AND RULE 4.437** DATE: March 9, 2005 TIME: 1:30 p.m. DEPT: 9

TO: PLAINTIFF ABOVE-NAMED AND ITS ATTORNEY, BONNIE M. DUMANIS, DISTRICT ATTORNEY FOR THE COUNTY OF SAN DIEGO; AND TO ALAN M. CROGAN, CHIEF PROBATION OFFICER; ATTENTION: DEPUTY PROBATION OFFICER E. FORREY

The defendant herein, JAMES CUNNINGHAM, submits the following statement in mitigation and in support of probation.

All references to rules are to the California Rules of Court.

I.

SUMMARY OF FACTS [Rule 4.437(c)]

The defendant adopts as the statement of facts the summary of the offense set forth in the probation officer's report, and the Court's recollections from the trial.

///

0084

II.

MATTERS IN DISPUTE & NOTICE OF INTENTION TO OFFER EVIDENCE

There are no matters in dispute and the defendant does not intend to present additional evidence.

III.

PROBATION SHOULD BE GRANTED IN THIS CASE

The critical question posed today is: In what manner should the court exercise its discretion in resolving the question of whether to impose a state prison commitment or probation. The District Attorney's Office, through its representative, will recommend that the court resolve the question by imposing a state prison sentence. It is our position that such a resolution would be overly harsh. We are recommending that the court exercise its discretion by imposing probation.

JAMES CUNNINGHAM should be given the benefit of several mitigating factors during the court's determination of which penalty to impose. The prison commitment should be stayed and JAMES CUNNINGHAM should be given a chance to make good on probation for the following reason:

IV.

CRITERIA AFFECTING PROBATION [Rule 4.414]

Rule 4.414 (a): Facts relating to the crime, including:

Rule 4.414 (a) (1): The nature, seriousness and circumstances of the crime as compared to other instances of the same crime.

Rule 4.414 (a) (2): While the defendant was armed with a weapon, it was not fired in the commission of the crime.

Rule 4.414 (a) (3): The victim in this case was not necessarily within those classes of persons deemed "vulnerable".

Rule 4.414 (a) (4): The defendant did not inflict bodily injury.

Rule 4.414 (a) (5): There was no monetary loss to the victim.

Rule 4.414 (a) (7): The crime was committed because of unusual circumstance, including great provocation, indicating that it is unlikely to recur.

Rule 4.414 (a) (8): The manner in which the crime was carried out shows conclusively that the defendant is an unsophisticated person.

Rule 4.414 (a) (9): The defendant did not take advantage of a position of trust or confidence to commit the crime.

Rule 4.414 (b): Facts relating to the defendant, including:

Rule 4.414 (b) (1): The defendant's criminal record does not reveal a pattern of regular or increasingly serious criminal conduct, especially considering that the defendant's last felony conviction was over ten years ago.

Rule 4.414 (b) (2): Defendant's prior performance on probation has been good.

Rule 4.414 (b) (3): Defendant is willing and able to comply with the conditions of probation.

Rule 4.414 (b) (4): The defendant is able to comply with reasonable terms of probation because he is 48 years old, has maintained steady employment , has a strong family background, including the care of his minor children, and has shown to ability to comply with the conditions of formal probation in past cases.

Rule 4.414 (b) (5): The effect of imprisonment on the defendant and particularly his family will be extremely negative and counter-productive.

Rule 4.414 (b) (8): The defendant is remorseful.

Rule 4.414 (b) (9): The defendant is not a danger to others if not imprisoned

V.

CRITERIA AFFECTING PROBATION IN UNUSUAL CASES [Rule 4.413 (c) (1)]

Rule 4.413 (c) (1):

(i) The fact or circumstances giving rise to the limitation on probation is, in this case, substantially less serious than the circumstances typically present in other cases involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence.

(ii) The current offense is less serious than a prior felony conviction that is the cause of the limitation on probation, and the defendant has been free from incarceration and serious violation of the law for a substantial time before the current offense.

Rule 4.413 (c) (2):

(i) Defendant participated in the crime under circumstances of great provocation, coercion, or duress not amounting to a defense, and the defendant has no recent record of committing crimes of violence.

VI.

CIRCUMSTANCES IN MITIGATION [Rule 4.423)]

Facts relating to the Crime:

Rule 4.423 (a) (3): The victim was an initiator of the incident by stealing from the defendant and taunting him over a period of months, thereby creating the hostile environment.

The victim was the provoker of the incident.

Rule 4.423 (a) (4): The crime was committed because of an unusual circumstance, namely, great provocation which is unlikely to recur.

Rule 4.423 (a) (5): The defendant's conduct was partially excusable because his intent was to get his stolen property back, which included clothing for his daughter and checks to his bank account.

Rule 4.423 (a) (7): The defendant exercised caution to avoid harm to persons or damage to property.

Facts Relating to the Defendant:

Rule 4.423 (b) (1): The defendant has a relatively insignificant criminal record for the past twelve years.

Rule 4.423 (b) (6): Up until this offense, the defendant's performance on probation was satisfactory.

VII.

MOTION TO STRIKE ADDITIONAL TERM OF IMPRISONMENT PURSUANT TO PENAL CODE SECTION 1170(a) AND 1170.1(h) [Rule 4.433 (c) (2)

The defendant now moves this Court to strike the prior strike allegation, based on the following reasons:

The prior strike occurred in 1983, thereby making it remote in time (over 20 years old).

The punishment under the three strikes law is disportionate to the severity of the current offense and to the defendant's criminal history.

The defendant has demonstrated an ability to conduct himself as a law abiding citizen for long periods of time.

The defendant is not deemed to be a danger to persons.

The offense was committed because of an unusual circumstance, that being the defendant's desire to take matters into his own hands and try to retrieve property that was stolen from him.

VIII.

PROPOSED SENTENCE AND OBJECTIVES OF SENTENCING [Rule 4.410]
GENERAL OBJECTIVES OF SENTENCING
PROPOSED SENTENCE

GENERAL OBJECTIVES OF SENTENCING

a. Protect society.

b. Punish the defendant.

c. Encourage the defendant to lead a law-abiding life in the future and deter him from future offenses.

d. Deter others from criminal conduct by demonstrating its consequences.

e. Prevent the defendant from committing new crimes by isolating him for the period of incarceration.

f. Secure restitution for the victims of crime.

g. Achieve uniformity in sentencing.

CONCLUSION

Before the Court is 48 years old James Cunningham. Mr. Cunningham was living a law abiding life, going to work and supporting his children. Mr. Cunningham's biggest mistake was to try and befriend his upstairs neighbors who in turn, stole from him and constantly threatened him with bodily harm. Mr. Cunningham made a huge mistake by going to the apartment with his shotgun, the question before this court is how to punish Mr. Cunningham in light of the fact that no one was hurt.

It is our request that this Court take a bold stance and grant Mr. Cunningham probation, with a stayed prison term. The Court should also strike the prior strike allegation for the reasons previously cited. In the alternative, the Court should order a 1203.4 evaluation from the Department of Corrections to further aid in what should be the appropriate sentence.

Dated:

Respectfully submitted,

STEVEN J. CARROLL
Public Defender

By: ______________________
STACY D. GULLEY
Deputy Public Defender

Attorneys for Defendant
JAMES CUNNINGHAM

0089

To: Honorable Judge:
I'm Ms. Jimmie L Cunningham, the Mother of James H. Cunningham I'm writing you this letter to ask for leniency for James,
You see I have 2 of his minor children. The 10 year old cup for him. Too, he helps me with my work yard shopping doctor's appointments Bath for the Kids I'm 65 and I really need him home. In talking to him by phone he expresses it sorrow about what took place.

Thanks,
Ms. Jimmie L. Cunningham

February 28, 2005

To Whom It May Concern:

Regarding: James Cunningham, Jr.

As an older brother of James, I've been around him his whole life and I've witness the changes in his life.

In the last ten years I've seen changes that indicate to me that he is really growing and maturing in a positive way.
I see him working steady, I see him taking responsibility for his children as a single father and providing a home for them. I think it would be devastating for them to lose him at this time in their lives.

Our family has suffered several tragedies in the last few years and it has possibly made him overly cautious in some ways.

I ask for your leniency in deciding this matter.

Sincerely,

Garry D. Cunningham
5490 Lenox Dr.
San Diego, Ca 92114
(619) 262-9476

February 28, 2005

To Whom It May Concern:

Regarding: James Cunningham, Jr.

I've known James for approximately 28 years. I find him to be a very reliable person and I admire him for his effort to raise his children alone. As a single parent myself I applaud his efforts. He is a steady worker and seem to be doing a good job in taking care of his family. I think it will be very hard on his children if their father is remove from their lives for a longer period of time. Thank you for considering my feelings in this matter.

Sincerely,

Barbara J Sibley

Barbara J Sibley
5419 Churchward St
San Diego, Ca 92114

March 3, 2005

TO WHOM IT MAY CONCERN:

I welcome this opportunity to share my feelings about James Cunningham and the kind, considerate, warm and tender hearted person that I personally know him to be. I have known James for the past 20+ years as the brother of my fiancée, Uncle to my two daughters, and a personable supportive friend to me and my family. He is a good father to his two daughters, a loving son to his Mother and a good family member that is close to all of his brothers, nieces and nephews and friends. I am sharing what I know from observation and experience and have seen him lend nothing but positive support, always.

I am terribly disturbed by the accusation(s) that have been made against him and feel that if any of it is true, then he had to be provoked to the point of defending himself. However, I don't believe that he is capable of committing any harm to anyone unless he was provoked.

I pray that justice will be done by him in that all of the evidence will be weighed heavily, if there be any against him; and also asking you to realize that there definitely is two sides to every story by ensuring that the scale is equally balanced before settling in judgment just against him.

Humbly Submitted,

Gwendolyn R. Sevier

Gwendolyn Sevier
(619) 263-0293

0093

ABSTRACT OF JUDGMENT – PRISON COMMITMENT - DETERMINATE

[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED]

CR-290

FILED
SAN DIEGO SUPERIOR COURT
MAR 10 2005
CLERK OF THE SUPERIOR COURT
BY C. YUNKHERR

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA vs.
DEFENDANT: JAMES HENRY CUNNINGHAM
DOB: 02-16-56
AKA: JAMES HENRY COTTEN
CII#: 05699671
BOOKING #: 04141108
☐ NOT PRESENT

SCE243538 -A
-B
-C
-D

COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT
☐ AMENDED ABSTRACT

DATE OF HEARING	DEPT. NO.	JUDGE
03-09-05	9	WILLIAM J. MCGRATH

CLERK	REPORTER	PROBATION NO. OR PROBATION OFFICER
J. NEAL	T. ERVIN	561099

COUNSEL FOR PEOPLE	COUNSEL FOR DEFENDANT
D. LINK	S. GULLEY ☒ APPTD.

1. Defendant was convicted of the commission of the following felonies:
☐ Additional counts are listed on attachment
____ (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY: JURY	COURT	PLEA	TERM (L, M, U)	CONCURRENT	CONSECUTIVE 1/3 VIOLENT	CONSECUTIVE 1/3 NON-VIOLENT	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (refer to item 5)	654 STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED YRS.	MOS.
2	PC	245(a)(2)	ASSAULT W/A FIREARM	2004	01-06-05	X			L							4	0
3	PC	12021(a)(1)	POSSESS FIREARM BY FELON	2004	01-06-05	X			L	X						[2	8]
4	PC	12020(a)(1)	POSSESS DEADLY WEAPON	2004	01-06-05	X			L						X		
					- -												
					- -												
					- -												

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL	
2	PC12022.5(a)	3							3	0

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL	
PC667(a)(1)	5							5	0

4. ☒ Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

5. INCOMPLETED SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6. TOTAL TIME ON ATTACHED PAGES:

7. ☐ Additional indeterminate term (see CR-292).

8. TOTAL TIME EXCLUDING COUNTY JAIL TERM: 12 | 0

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

PEOPLE OF THE STATE OF CALIFORNIA vs.
DEFENDANT: **JAMES HENRY CUNNINGHAM** 0094

SCE243538 -A	-B	-C	-D

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

a. Restitution Fine(s):

Case A: $1000 per PC 1202.4(b) forthwith per PC 2085.5; $1000 per PC 1202.45 suspended unless parole is revoked.
Case B: $_____ per PC 1202.4(b) forthwith per PC 2085.5; $_____ per PC 1202.45 suspended unless parole is revoked.
Case C: $_____ per PC 1202.4(b) forthwith per PC 2085.5; $_____ per PC 1202.45 suspended unless parole is revoked.
Case D: $_____ per PC 1202.4(b) forthwith per PC 2085.5; $_____ per PC 1202.45 suspended unless parole is revoked.

b. Restitution per PC 1202.4(f):

Case A: $_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
Case B: $_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
Case C: $_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
Case D: $_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

(*List victim name(s) if known and amount breakdown in item 11, below.)

c. Fine(s):

Case A: $_____ per PC 1202.5. $_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS
Case B: $_____ per PC 1202.5. $_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS
Case C: $_____ per PC 1202.5. $_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS
Case D: $_____ per PC 1202.5. $_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS

d. Lab Fee and Drug Program Fee:

Case A: Lab Fee: $_____ per HS 11372.5(a) for counts _____. ☐ Drug Program Fee of $150 per HS 11372.7(a).
Case B: Lab Fee: $_____ per HS 11372.5(a) for counts _____. ☐ Drug Program Fee of $150 per HS 11372.7(a).
Case C: Lab Fee: $_____ per HS 11372.5(a) for counts _____. ☐ Drug Program Fee of $150 per HS 11372.7(a).
Case D: Lab Fee: $_____ per HS 11372.5(a) for counts _____. ☐ Drug Program Fee of $150 per HS 11372.7(a).

10. TESTING
a. ☐ AIDS pursuant to PC 1202.1 b. ☒ DNA pursuant to PC 296 c. ☐ other *(specify)*:

11. Other orders *(specify)*:

12. EXECUTION OF SENTENCE IMPOSED
a. ☒ at initial sentencing hearing.
b. ☐ at resentencing per decision on appeal.
c. ☐ after revocation of probation.
d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
e. ☐ other *(specify)*:

13. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT	
A	204	178	26	☐ 4019 ☒ 2933.1
B				☐ 4019 ☐ 2933.1
C				☐ 4019 ☐ 2933.1
D				☐ 4019 ☐ 2933.1

Date Sentence Pronounced:	Time Served in State Institution: DMH	CDC	CRC
03-09-05	[ ]	[ ]	[ ]

14. The defendant is remanded to the custody of the sheriff ☐ forthwith ☒ after 48 hours excluding Saturdays, Sundays, and holidays.
To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
☐ other *(specify)*:

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE	DATE
C. YUNKHERR	03-10-05

INSTRUCTIONS ON BACK. This Notice of Appeal must be filed within 60 days after judgment or sentence in the county superior court where the judgment or sentence was imposed.

0095

(1) Name: Stacy Gulley

CDC or Booking No. 04141108 -or-

State Bar No. 110660

Address: Office of the Public Defender
250 East Main Street, Sixth Floor
El Cajon, CA 92020

Telephone (if applicable): (619) 579-3316

The filing of a notice of appeal by counsel does not in itself constitute an undertaking by that attorney to handle that appeal. (P.C. 1240.1, subd. (b).)

FILED
Clerk of the Superior Court
APR 22 2005
By: J. ARELLANO, Deputy

APR 22 2005

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
vs.
James Cunningham
Date of birth: 02/16/56

Defendant and Appellant

Superior Court No.: CE243538

NOTICE OF APPEAL

From the Judgment of this court entered

Date of Sentencing: 3-9-05

(6) **TYPE OF PROCEEDING:** One of these boxes must be checked.

- ☒ Jury or Court Trial
- ☐ A Contested Probation Violation (Vickers hearing),
- ☐ A Plea of Guilty or Nolo Contendere, or an Admitted Probation Violation.

(7) *If you pleaded guilty, or you admitted you were in violation of probation, you must also check one or more of the following boxes:*

1. ☐ This appeal is based on the sentence or other matters occurring after the plea.
2. ☐ This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
3. ☐ This appeal challenges the validity of the plea or admission. (*See the attached "Request for Certificate of Probable Cause"* form. A written request, signed under penalty of perjury, must be filed along with the notice of appeal. It should show why you think the plea was not obtained legally.)

Date: 4/22/05

(Signature of Defendant or Trial Counsel)

(8) **MOTION FOR APPOINTMENT OF COUNSEL**

Defendant requests the Court of Appeal appoint any attorney for appeal. Defendant does not have sufficient means to hire an attorney. Defendant's spouse (if applicable) and defendant have the following combined income and property:

Take-home pay from job (monthly): $__________

Other income (monthly): $__________

Money in bank at this time: $__________

Trial attorney was: (Check one.)
x A public defender or court-appointed attorney.
☐ An attorney paid for by defendant.

Home ownership? (Check one.) ☐ Yes ☐ No ☐ Other:

I declare under penalty of perjury under the laws of the State of California that this information is true and correct.

Date Signature of Defendant or Trial Counsel

CUSTODY 0096

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

☐ Central Division ☒ East County Division ☐ North County Division ☐ South County Division 0096 WT / DT

PEOPLE vs. Cunningham, James STATUS: C4 $ 126,600 ☐ BB ☐ CB (Y/N)

CASE # CE243538 PROS #___ DOB: 2-16-58 BKG # 4141188 CTS: 4 days __ hrs.

DATE: 9-15-04 AT 130 DEPT. # 2 INTERPRETER: ___ ☐ Spanish ☐ Sworn ☐ Oath on File

JUDGE/COMM/PRO-TEM: Charles W. Ervin, Judge ☐ STIP. FILED REPORTER – CSR #

CLERK: M. Stulanus, Deputy TAPE # 6357 COUNTER # 1416

CHARGE(S): ct 1 PC459/460/462(a)/667.5(c)(21)/12022.5(a), ct 2 PC245(a)(2)/12022.5(a) ct 3 PC12021(a)(1), ct 4 PC12020(a)(1) + 1 Serious Fel PR + 1 Strike PR

FUTURE DATES: ___ ☐ CONFIRMED ☐ VACATED

L. Schorr — Attorney for the People (DDA / DCA)

K. Hirr — Attorney for the Defendant (PD / APD / PCC / Retained / Counseling)

☒ Defendant present by with / without counsel ☐ in pro per ☒ via audio/video ☐ not produced in courtroom ☐ Defendant failed to appear

Case called for ☐ FTA ☒ Arraignment ☐ Bail Review ☐ Readiness/DWT ☐ Jury Trial ☐ Prelim. Exam. ☐ DEJ

☐ Warrant Ordered/Issued on ___ ☐ Warrant Cleared ☐ Warrant Outstanding

☐ Complaint amended by interlineation to read: ___

☐ Amended ☐ Amendment to complaint filed ☐ charging ☐ adding ☐ VC23103 (a) pursuant to VC23103.5

☐ VC22107, VC21658(a), PC647(f) ☐ ___ as INFRACTION(S) pursuant to PC17(d)(2). ☐ other: ___

☐ Defendant advised of and waives the right to a **separate and conflict-free attorney / interpreter** for this court appearance.

☒ Defendant duly arraigned and advised of the **constitutional and statutory rights** as indicated on the reverse side of this docket*.

☐ Acknowledgment of advisal of constitutional rights signed and filed ☒ Defendant has received copy of complaint.

☒ Defendant waives reading of complaint ☒ Deft. states **true name** is ___ ☒ on complaint [__ line]

☒ **DEFENDANT PLEADS NOT GUILTY** and denies any priors/allegations/separate convictions alleged ☐ on amended complaint.

☐ Defendant waives time for speedy trial. ☐ Defendant waives 10 day/60 day statutory time for prelim. hearing.

☐ Defendant waives personal presence ☐ per PC977. ☐ Defendant waives jury trial. ☐ Defendant waives preliminary hearing.

COUNSEL ☒ **REQUEST FOR APPOINTED ATTY.** ☒ **Granted** ☒ Public Defender ☐ Alternate Public Defender ☐ Private Conflict Counsel

Atty: ___ ☐ **Denied** ☐ Referred to Near Indigent Panel ☐ Deft to retain counsel.

☐ The Court finds the defendant ☐ is ☐ is not qualified to represent self **PRO PER.** ☐ Lopez Waiver signed and filed.

CONVICTION ☐ Deft. is sworn and examined. ☐ Defendant withdraws any previously entered plea.

DEFENDANT PLEADS: ☐ **GUILTY** ☐ **NO CONTEST** to: ___ ☐ VC23152(a) / (b)

☐ Admits ___ separate conviction(s) alleged/ ___ allegation(s)

☐ charges contained in amended/amendment to complaint. ☐ V23103(a) per 23103.5 ☐ as a lesser included offense of ___.

☐ On motion of Court/People/Defendant Count(s) ___ remaining is/are **DISMISSED** ☐ FOJ ☐ VOP ☐ ___.

☐ On motion of Court/People/Defendant Allegation(s)/Prior(s) ___ remaining is/are **STRICKEN** ☐ FOJ ☐ VOP ☐ ___.

☐ Plea form executed and filed ☐ with statement of prosecutor. ☐ Peo vs. West ☐ Harvey Waiver ☐ Arbuckle Waiver ☐ BAC: . ___

☐ Court finds a knowing and intelligent waiver of constitutional rights and factual basis for the plea.

☐ PC1210 ☐ accepted ☐ declined. ☐ Time waived for sentencing, see JUDGMENT.

☐ Stipulated bindover. ☐ Case certified as a general jurisdiction matter. ☐ Complaint deemed the Information.

MOTIONS ☐ Motion for ___ by People/Defendant with/without objection granted/denied.

DEFERRED ENTRY OF JUDGMENT ☐ Deft. applies for **D.E.J.** pursuant to PC1000 as to Count(s) ___, time waived for sentencing.

☐ **Deferred Entry of Judgment** ☐ **granted** ☐ **reinstated** for ___ mo./ yrs. ☐ Tier I / Tier II ☐ New term ☐ S.D. Rescue Mission Program

☐ Tier and term to be determined by Assessor. Comply with all orders of Assessor. ☐ Enroll by ___

☐ Pay $ ___ Admin. fee ☐ $ ___ DEJ Restitution fee (PC1001.90)

☐ $ ___ credit for time served TOTAL AMOUNT DUE $ ___ ☐ Forthwith ☐ By ___ ☐ Waived.

☐ Defendant has satisfactorily COMPLETED the DEJ Program, previously entered plea to count(s) ___ set aside and charges dismissed.

☐ Defendant has FAILED to satisfactorily perform in the DEJ Program. ☐ PC1000 set aside and any unpaid fees pertaining thereto deleted.

☐ Court makes a finding of guilt to the charge(s) pled. ☐ Time waived for sentencing, see JUDGMENT.

REFERRALS Report ☐ forthwith ☐ by ___ **to** ☐ Assessment Unit ☐ Probation Department

☐ Pre-Sentence ☐ Mini ☐ Supplemental ☐ Psych. ☐ Limited re: Drugs/Alcohol/Domestic Violence/Anger Mgmt/Restitution Report Ordered.

☐ Court Collections ☐ for payment of Attorney fee * $ ___ ☐ Indigent as to Attorney Fees.

* The Court finds that the defendant has the ability to repay the County of San Diego for the costs of Court Appointed Attorney fees.

HEARINGS Set/continued on motion of ☐ People ☐ Defense ☐ Opposed ☐ Unopposed ☐ By Stipulation, Time is ☐ **Waived**

Hearing	Date	at	in Dept.	Hearing	Date	at	in Dept.
☐ Re-Attorney				☐ Motion/PC1538.5			
☐ Arraignment				☐ Jury / Court Trial			
☐ Bail Review				☐ Sentencing			
☐ Pre-Trial				☐ Prob. Hrg.& Sent			
☒ Readiness/DWT	9-22-04	9:00	2	☐ DEJ Hearing			
☒ Prelim Exam	9-28-04	8:40	11	☐			

☐ Time Estimate: ___ hr/day ☐ Set ☐ with case(s): ___ ☐ to trail for revocation

OTHER ☐ Verbal notice of license suspension (DL 310) signed. ☐ Fingerprint form filed.

deft is complaining of dental problem, sheriffs to provide deft with proper dental & medical treatment that he needs while he is in custody. Sheriff are directed to provide deft with access to a telephone pursuant to state law & interpretations of his rights under the constitution to have access to other persons

CUSTODY STATUS ☒ Deft. **REMANDED** to custody of Sheriff, bail $126,600 ☐ WITHOUT BAIL ☐ Per PC1275 ☒ as set

☐ increased ☐ reduced ☐ Bail Unit Report Ordered re: SOR

☐ Deft. **RELEASED:** ☐ on bail previously posted. ☐ after booking ☐ OR/SOR ☐ DEJ

☐ to an authorized representative of: ___ on ___ at ___

☐ Release Conditions: ☐ Attend ___ AA/CA/NA/MA Mtgs. per week and submit proof at each court hearing. ☐ Abstain from alcohol.

☐ Not use or possess any controlled substances without a valid prescription. ☐ Not possess narcotic paraphernalia.

☐ Deft. waives 4th **amendment rights** and agrees to submit person, property, place of residence, vehicle, personal effects to search at any time with or without a warrant, and with or without reasonable cause, when required by a Probation Officer or other law enforcement officer ☐ until revoked. ☐ for the duration of deferred entry of judgment.

☐ Have no contact with / stay away from: ___ ☐ PC136.2 Protective Order issued.

WARRANT ☐ Arrest ☐ Bench ☐ ___ Warrant ordered ☐ Bail set at $ ___ ☐ No Bail ☐ ISSUED ON: ___

☐ Schedule for court ☐ Mandatory Appearance ☐ Night Service Authorized ☐ Cash bail may be forfeited.

☐ HOLD issuance of warrant to DATE SET ABOVE. ☐ Warrant previously ordered/issued ☐ rescinded ☐ recalled on ___

☐ Affidavit Requested. Hearing set for ___.

BAIL STATUS Bail is ☐ exonerated ☐ forfeited ☐ Fine from bail, refund balance. ☐ Decl. of non-collusion/ reassumption of liability filed.

☐ Bail forfeiture set aside and bond reinstated/exonerated ☐ upon payment of court cost $ ___ within 30 days ☐ cost waived

☐ Bond #: ___ Bond $ ___ Bond Co. ___

Attest a true copy Dated: ___ CLERK, by ___, Deputy Clerk

Distribution by: ___ on ___ to: Jail Def. Atty. Pros. Prob. R&R Interpreter Assessment Other: ___

SDSC CRM-150(Rev. 8-03) **MISDEMEANOR/FELONY – PRE-DISPOSITION MINUTES**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

0097

☐ Central Division ☒ East County Division ☐ North County Division ☐ South County Division WT / DT

PEOPLE vs. CUNNINGHAM JAMES H STATUS: CUST $ 126,600 - ☐ BB ☐ CB (Y/N)

CASE # CF243538 PROS. # ______ DOB: 021558 BKG # 04141108 CTS. 91 days ____ hrs.

DATE: 09/23/04 AT 0900 DEPT. # 002 INTERPRETER: ______ ☐ Spanish ☐ Sworn ☐ Oath on File

JUDGE/COMM/PRO-TEM: ...des W. Ervin, Judge ☐ STIP. FILED REPORTER – CSR # ______

CLERK: ...anue, Deputy TAPE # ______ COUNTER # ______

CHARGE(S): PC459/460/667.5(c)(21)/12022.5(a) PC245(A)(2)/12022.5(a) PC12021(A)(1) PC12021(A)(1) 1 SIF prior, 1 strike prior

FUTURE DATES: PE 09-28-04 8:40 D-11 ☒ CONFIRMED ☐ VACATED

Ronald A. Mendes — Attorney for the People (DDA / DCA)

P. DEFENDERS 14- 8 50 — Attorney for the Defendant (PD / APD / PCC / Retained / Counseling)

☒ Defendant present by (with) without counsel ☐ in pro per ☐ via audio/video ☒ not produced in courtroom ☐ Defendant failed to appear

Case called for ☐ FTA ☐ Arraignment ☐ Bail Review ☒ Readiness/DWT ☐ Jury Trial ☐ Prelim. Exam. ☐ DEJ ______

☐ Warrant Ordered/Issued on ______ ☐ Warrant Cleared ☐ Warrant Outstanding

☐ Complaint amended by interlineation to read: ______

☐ Amended ☐ Amendment to complaint filed ☐ charging ☐ adding ☐ VC23103 (a) pursuant to VC23103.5

☐ VC22107, VC21658(a), PC647(f) ☐ ______ as INFRACTION(S) pursuant to PC17(d)(2). ☐ other: ______

☐ Defendant advised of and waives the right to a **separate and conflict-free attorney / interpreter** for this court appearance.

☐ Defendant duly arraigned and advised of the **constitutional and statutory rights** as indicated on the reverse side of this docket*.

☐ Acknowledgment of advisal of constitutional rights signed and filed. ☐ Defendant has received copy of complaint.

☐ Defendant waives reading of complaint. ☐ Deft. states **true name** is ______ ☐ on complaint [__ line]

☐ **DEFENDANT PLEADS NOT GUILTY** and denies any priors/allegations/separate convictions alleged ☐ on amended complaint.

☐ Defendant waives time for speedy trial. ☐ Defendant waives 10 day/60 day statutory time for prelim. hearing.

☐ Defendant waives personal presence ☐ per PC977. ☐ Defendant waives jury trial. ☐ Defendant waives preliminary hearing.

COUNSEL ☐ **REQUEST FOR APPOINTED ATTY.** ☐ **Granted** ☐ Public Defender ☐ Alternate Public Defender ☐ Private Conflict Counsel

Atty: ______ ☐ **Denied** ☐ Referred to Near Indigent Panel ☐ Deft to retain counsel.

☐ The Court finds the defendant ☐ is ☐ is not qualified to represent self **PRO PER.** ☐ Lopez Waiver signed and filed.

CONVICTION ☐ Deft. is sworn and examined. ☐ Defendant withdraws any previously entered plea.

DEFENDANT PLEADS: ☐ **GUILTY** ☐ **NO CONTEST** to: ______ ☐ VC23152(a) / (b)

☐ Admits ______ separate conviction(s) ______ allegation(s)

☐ charges contained in amended/amendment to complaint. ☐ VC23103(a) per 23103.5 ☐ as a lesser included offense of ______.

☐ On motion of Court/People/Defendant Count(s) ______ remaining is/are **DISMISSED** ☐ FOJ ☐ VOP ☐ ______.

☐ On motion of Court/People/Defendant Allegation(s)/Prior(s) ______ remaining is/are **STRICKEN** ☐ FOJ ☐ VOP ☐ ______.

☐ Plea form executed and filed ☐ with statement of prosecutor. ☐ People vs. West ☐ Harvey Waiver ☐ Arbuckle Waiver ☐ BAC: . ______

☐ Court finds a knowing and intelligent waiver of constitutional rights and factual basis for the plea.

☐ PC1210 ☐ accepted ☐ declined. ☐ Time waived for sentencing, see JUDGMENT.

☐ Stipulated bindover. ☐ Case certified as a general jurisdiction matter. ☐ Complaint deemed the Information.

MOTIONS ☐ Motion for ______ by People/Defendant with/without objection granted/denied.

DEFERRED ENTRY OF JUDGMENT ☐ Deft. applies for **D.E.J.** pursuant to PC1000 as to Count(s) ______, time waived for sentencing.

☐ **Deferred Entry of Judgment** ☐ **granted** ☐ reinstated for ___ mo./ yrs. ☐ Tier I / Tier II ☐ New term ☐ S.D. Rescue Mission Program

☐ Tier and term to be determined by Assessor. Comply with all orders of Assessor. ☐ Enroll by ______

☐ Pay $ ______ Admin. fee ☐ $ ______ DEJ Restitution fee (PC1001.90)

☐ $ ______ credit for time served TOTAL AMOUNT DUE $ ______ ☐ Forthwith ☐ By ______ ☐ Waived.

☐ Defendant has satisfactorily COMPLETED the DEJ program, previously entered plea to count(s) ______ set aside and charges dismissed.

☐ Defendant has FAILED to satisfactorily perform in the DEJ Program. ☐ PC1000 set aside and any unpaid fees pertaining thereto deleted.

☐ Court makes a finding of guilt to the charge(s) pled. ☐ Time waived for sentencing, see JUDGMENT.

REFERRALS **Report** ☐ forthwith ☐ by ______ **to** ☐ Assessment Unit ☐ Probation Department

☐ Pre-Sentence ☐ Mini ☐ Supplemental ☐ Psych. ☐ Limited re: Drugs/Alcohol/Domestic Violence/Anger Mgmt/Restitution Report Ordered.

☐ Court Collections ☐ for payment of Attorney fee * $ ______ ☐ Indigent as to Attorney Fees.

* The Court finds that the defendant has the ability to repay the County of San Diego for the costs of Court Appointed Attorney fees.

HEARINGS Set/continued on motion of ☐ People ☐ Defense ☐ Opposed ☐ Unopposed ☐ By Stipulation, Time is ☐ **Waived**

☐ Re-Attorney	______ at ______	in Dept. ______		☐ Motion/PC1538.5	______	at ______	in Dept. ______
☐ Arraignment	______ at ______	in Dept. ______		☐ Jury / Court Trial	______	at ______	in Dept. ______
☐ Bail Review	______ at ______	in Dept. ______		☐ Sentencing	______	at ______	in Dept. ______
☐ Pre-Trial	______ at ______	in Dept. ______		☐ Prob. Hrg.& Sent	______	at ______	in Dept. ______
☐ Readiness/DWT	______ at ______	in Dept. ______		☐ DEJ Hearing	______	at ______	in Dept. ______
☐ Prelim Exam	______ at ______	in Dept. ______		☐ ______	______	at ______	in Dept. ______

☐ Time Estimate: ______ hr/day ☐ Set ☐ with case(s): ______ ☐ to trail for revocation

OTHER ☐ Verbal notice of license suspension (DL 310) signed. ☐ Fingerprint form filed.

CUSTODY STATUS ☒ Deft. **REMANDED** to custody of Sheriff, bail $ 126,600 ☐ WITHOUT BAIL ☐ Per PC1275 ☐ as set

☐ increased ☐ reduced ☐ Bail Unit Report Ordered re: SOR

☐ Deft. **RELEASED:** ☐ on bail previously posted. ☐ after booking ☐ OR/SOR ☐ DEJ

☐ to an authorized representative of: ______ on ______ at ______

☐ Release Conditions: ☐ Attend ______ AA/CA/NA/MA Mtgs. per week and submit proof at each court hearing. ☐ Abstain from alcohol.

☐ Not use or possess any controlled substances without a valid prescription. ☐ Not possess narcotic paraphernalia.

☐ Deft. waives 4th **amendment rights** and agrees to submit person, property, place of residence, vehicle, personal effects to search at any time with or without a warrant, and with or without reasonable cause, when required by a Probation Officer or other law enforcement officer ☐ until revoked. ☐ for the duration of deferred entry of judgment.

☐ Have no contact with / stay away from: ______ ☐ PC136.2 Protective Order issued.

WARRANT ☐ Arrest ☐ Bench ☐ ______ Warrant ordered ☐ Bail set at $ ______ ☐ No Bail ☐ ISSUED ON: ______

☐ Schedule for court ☐ Mandatory Appearance ☐ Night Service Authorized ☐ Cash bail may be forfeited.

☐ HOLD issuance of warrant to DATE SET ABOVE. ☐ Warrant previously ordered/issued ☐ rescinded ☐ recalled on ______ ______

☐ Affidavit Requested. Hearing set for ______

BAIL STATUS Bail is ☐ exonerated ☐ forfeited ☐ Fine from bail, refund balance. ☐ Decl. of non-collusion/ reassumption of liability filed.

☐ Bail forfeiture set aside and bond reinstated/exonerated ☐ upon payment of court cost $ ______ within 30 days ☐ cost waived

☐ Bond #: ______ Bond $ ______ Bond Co. ______

Attest a true copy Dated: ______ CLERK, by ______, Deputy Clerk

Distribution by: ______ on ______ to (Jail) Deft. Atty. Pros. Prob. R&R Interpreter Assessment Other: ______

SDSC CRM-150(Rev. 8-03) **MISDEMEANOR/FELONY – PRE-DISPOSITION MINUTES**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO 0098

☐ Central Division ☒ East County Division ☐ North County Division ☐ South County Division WT / OT

PEOPLE vs. CUNNINGHAM JAMES H STATUS: CUST $ 126,600 ☐BB ☐CB (Y/N)

CASE # CE243538 PROS. # DOB: 021658 BKG # 04141108 CTS: _____ days _____ hrs.

DATE: 09/28/04 AT 0840 DEPT. # 011 INTERPRETER: ______ ☐ Spanish ☐ Sworn ☐ Oath on File

JUDGE/COMM/PRO-TEM: Herbert J. Exarhos, Judge ☐ STIP. FILED REPORTER – CSR # IRENE PERKINS CSR#12727

CLERK: P. Ruggles, Deputy TAPE # COUNTER #

CHARGE(S): Ct1 PC459/460/462(b)/667.5(c)(21)/12022.5(a) Ct2 PC245(A)(2) Ct3 PC12021(A)(1) Ct4 PC12021(A)(1)

1 Serious Felony Prior 12022.5(a); 1 Strike Prior

FUTURE DATES: ☐ CONFIRMED ☐ VACATED 20-4 50

D. Fink P. DEFENDERS S. Dulley

Attorney for the People (DDA / DCA) Attorney for the Defendant (PD / APD / PCC / Retained / Counseling)

☒ Defendant present by / with / without counsel ☐ in pro per ☐ via audio/video ☐ not produced in courtroom ☐ Defendant failed to appear

Case called for ☐ FTA ☐ Arraignment ☐ Bail Review ☐ Readiness/DWT ☐ Jury Trial ☒ Prelim. Exam. ☐ DEJ

☐ Warrant Ordered/Issued on _____ ☐ Warrant Cleared ☐ Warrant Outstanding

☐ Complaint amended by interlineation to read: _____

☐ Amended ☐ Amendment to complaint filed ☐ charging ☐ adding ☐ VC23103 (a) pursuant to VC23103.5

☐ VC22107, VC21658(a), PC647(f) ☐ _____ as INFRACTION(S) pursuant to PC17(d)(2). ☐ other: _____.

☐ Defendant advised of and waives the right to a **separate and conflict-free attorney / interpreter** for this court appearance.

☐ Defendant duly arraigned and advised of the **constitutional and statutory rights** as indicated on the reverse side of this docket*.

☐ Acknowledgment of advisal of constitutional rights signed and filed. ☐ Defendant has received copy of complaint.

☐ Defendant waives reading of complaint. ☐ Deft. states **true name** is _____ ☐ on complaint [__ line]

☐ **DEFENDANT PLEADS NOT GUILTY** and denies any priors/allegations/separate convictions alleged ☐ on amended complaint.

☐ Defendant waives time for speedy trial. ☐ Defendant waives 10 day/60 day statutory time for prelim. hearing.

☐ Defendant waives personal presence ☐ per PC977. ☐ Defendant waives jury trial. ☐ Defendant waives preliminary hearing.

COUNSEL ☐ **REQUEST FOR APPOINTED ATTY.** ☐ **Granted** ☐ Public Defender ☐ Alternate Public Defender ☐ Private Conflict Counsel

Atty: _____ ☐ **Denied** ☐ Referred to Near Indigent Panel ☐ Deft to retain counsel.

☐ The Court finds the defendant ☐ is ☐ is not qualified to represent self **PRO PER.** ☐ Lopez Waiver signed and filed.

CONVICTION ☐ Deft. is sworn and examined. ☐ Defendant withdraws any previously entered plea.

DEFENDANT PLEADS: ☐ **GUILTY** ☐ **NO CONTEST** to: _____ ☐ VC23152(a) / (b)

☐ Admits _____ separate conviction(s) alleged/ _____ allegation(s)

☐ charges contained in amended/amendment to complaint. ☐ V23103(a) per 23103.5 ☐ as a lesser included offense of _____.

☐ On motion of Court/People/Defendant Count(s) _____ remaining is/are **DISMISSED** ☐ FOJ ☐ VOP ☐ _____.

☐ On motion of Court/People/Defendant Allegation(s)/Prior(s) _____ remaining is/are **STRICKEN** ☐ FOJ ☐ VOP ☐ _____.

☐ Plea form executed and filed ☐ with statement of prosecutor. ☐ Peo vs. West ☐ Harvey Waiver ☐ Arbuckle Waiver ☐BAC: . _____

☐ Court finds a knowing and intelligent waiver of constitutional rights and factual basis for the plea.

☐ PC1210 ☐ accepted ☐ declined. ☐ Time waived for sentencing, see JUDGMENT.

☐ Stipulated bindover. ☐ Case certified as a general jurisdiction matter. ☐ Complaint deemed the Information.

MOTIONS ☐ Motion for _____ by People/Defendant with/without objection granted/denied.

DEFERRED ENTRY OF JUDGMENT ☐ Deft. applies for **D.E.J.** pursuant to PC1000 as to Count(s) _____, time waived for sentencing.

☐ **Deferred Entry of Judgment** ☐ **granted** ☐ **reinstated** for ___ mo./ yrs. ☐ Tier I / Tier II ☐ New term ☐ S.D. Rescue Mission Program

☐ Tier and term to be determined by Assessor. Comply with all orders of Assessor. ☐ Enroll by _____

☐ Pay $ _____ Admin. fee ☐ $ _____ DEJ Restitution fee (PC1001.90)

☐ $ _____ credit for time served TOTAL AMOUNT DUE $ _____ ☐ Forthwith ☐ By _____ ☐ Waived.

☐ Defendant has satisfactorily COMPLETED the DEJ Program, previously entered plea to count(s) _____ set aside and charges dismissed.

☐ Defendant has FAILED to satisfactorily perform in the DEJ Program. ☐ PC1000 set aside and any unpaid fees pertaining thereto deleted.

☐ Court makes a finding of guilt to the charge(s) pled. ☐ Time waived for sentencing, see JUDGMENT.

REFERRALS **Report** ☐ forthwith ☐ by _____ to ☐ Assessment Unit ☐ Probation Department

☐ Pre-Sentence ☐ Mini ☐ Supplemental ☐ Psych. ☐ Limited re: Drugs/Alcohol/Domestic Violence/Anger Mgmt/Restitution Report Ordered.

☐ Court Collections ☐ for payment of Attorney fee * $ _____ ☐ Indigent as to Attorney Fees.

* The Court finds that the defendant has the ability to repay the County of San Diego for the costs of Court Appointed Attorney fees.

HEARINGS Set/continued on motion of ☐ People ☐ Defense ☐ Opposed ☐ Unopposed ☐ By Stipulation, Time is ☐ **Waived**

☐ Re-Attorney	_____ at _____	in Dept. _____		☐ Motion/PC1538.5	_____ at _____	in Dept. _____
☐ Arraignment	_____ at _____	in Dept. _____		☐ Jury / Court Trial	_____ at _____	in Dept. _____
☐ Bail Review	_____ at _____	in Dept. _____		☐ Sentencing	_____ at _____	in Dept. _____
☐ Pre-Trial	_____ at _____	in Dept. _____		☐ Prob. Hrg.& Sent	_____ at _____	in Dept. _____
☐ Readiness/DWT	_____ at _____	in Dept. _____		☐ DEJ Hearing	_____ at _____	in Dept. _____
☐ Prelim Exam	_____ at _____	in Dept. _____		☐ _____	_____ at _____	in Dept. _____

☐ Time Estimate: _____ hr/day ☐ Set ☐ with case(s): _____ ☐ to trail for revocation

OTHER ☐ Verbal notice of license suspension (DL 310) signed. ☐ Fingerprint form filed.

CASE SENT TO DEPT. 12 **FOR TRIAL/PRELIM/CHANGE OF PLEA** 1/7r

CUSTODY STATUS ☐ Deft. **REMANDED** to custody of Sheriff, bail $ _____ ☐ WITHOUT BAIL ☐ Per PC1275 ☐ as set

☐ increased ☐ reduced ☐ Bail Unit Report Ordered re: SOR

☐ Deft. **RELEASED:** ☐ on bail previously posted. ☐ after booking ☐ OR/SOR ☐ DEJ

☐ to an authorized representative of: _____ on _____ at _____

☐ Release Conditions: ☐ Attend _____ AA/CA/NA/MA Mtgs. per week and submit proof at each court hearing. ☐ Abstain from alcohol.

☐ Not use or possess any controlled substances without a valid prescription. ☐ Not possess narcotic paraphernalia.

☐ Deft. waives 4th **amendment rights** and agrees to submit person, property, place of residence, vehicle, personal effects to search at any time with or without a warrant, and with or without reasonable cause, when required by a Probation Officer or other law enforcement officer ☐ until revoked. ☐ for the duration of deferred entry of judgment.

☐ Have no contact with / stay away from: _____ ☐ PC136.2 Protective Order issued.

WARRANT ☐ Arrest ☐ Bench ☐ _____ Warrant ordered ☐ Bail set at $ _____ ☐ No Bail ☐ ISSUED ON: _____

☐ Schedule for court ☐ Mandatory Appearance ☐ Night Service Authorized ☐ Cash bail may be forfeited.

☐ HOLD issuance of warrant to DATE SET ABOVE. ☐ Warrant previously ordered/issued ☐ rescinded ☐ recalled on: _____

☐ Affidavit Requested. Hearing set for _____

BAIL STATUS Bail is ☐ exonerated ☐ forfeited ☐ Fine from bail, refund balance. ☐ Decl. of non-collusion/ reassumption of liability filed.

☐ Bail forfeiture set aside and bond reinstated/exonerated ☐ upon payment of court cost $ _____ within 30 days ☐ cost waived

☐ Bond #: _____ Bond $ _____ Bond Co. _____

Attest a true copy Dated: _____ CLERK, by _____, Deputy Clerk

Distribution by: _____ on _____ to: Jail Deft. Atty. Pros. Prob. R&R Interpreter Assessment Other: _____

SDSC CRM-150(Rev. 8-03) **MISDEMEANOR/FELONY – PRE-DISPOSITION MINUTES**

SUPER... COURT OF CALIFORNIA, COUNTY OF SA... DIEGO

☐ Central Division ☒ East County Division ☐ North County Division ☐ South County Division 0099 WT / DT

PEOPLE vs. Cunningham, James STATUS: $126,600 ☒ CUST ☐ BB ☐ CB (Y/N) ☐ NL ☐ Cite ☐ OR

CASE # CE243538 PROS # ________ DOB: ________ BKG # ________ CTS: ____ days ____ hrs.

DATE: 9/28/04 AT 8:40 DEPT. # 12 INTERPRETER: ________ ☐ Spanish ☐ Sworn ☐ Oath on File

JUDGE: ALLAN J PRECKEL REPORTER – CSR # R. CARLUCCI, CSR# 5552

CLERK Angela Narducci Reporters Address: P.O. Box 128, San Diego, CA. 92112-4104

CHARGE(S): Ct. 1 PC459/460/462(a)/667.5(c)(21)/12022.5(a); Ct 2 PC245(A)(2)/12022.5(a)
Ct. 3 PC12021(A)(1) Ct. 4 PC 12021(A)(1) S/F: 1 Strike: 1

D. Link — Attorney for the People (DDA)
S. Gulley — Defendant present with Counsel (PD / APD / PCC / Retained / Counseling)

Case called for Preliminary Examination ☐ Parties waive right to a ☐ continuous ☐ preliminary hearing. ☐ Stipulate to bindover.
☒ People's motion to designate Brian Chase ECPD as the Investigating Officer: ☐ granted ☐ denied.
☐ People's ☐ Defendant's ☐ Joint motion to exclude ☐ witnesses ☐ public: ☐ granted ☐ denied. ☐ Witnesses admonished by the Court.
☐ Counsel stipulate ________

☐ Counsel stipulate that ________ is deemed to have testified to certain matters recited on the record.
☐ Stipulation for preliminary hearing and motions only.

PEO	DEF	WITNESSES SWORN AND EXAMINED:	PEO	DEF	WITNESSES SWORN AND EXAMINED:
☒	☐	Stephen Paz ECPD	☐	☐	
☒	☐	Brian Chase ECPD	☐	☐	
☐	☐		☐	☐	

☒ See ATTACHED LIST FOR EXHIBITS marked/received into evidence. ☐ Exhibits released to offering party by stipulation.
☒ The People rest ☒ No affirmative evidence presented by Defense ☐ Defense rests. ☐ Arguments by counsel. ☒ Submitted.

MOTIONS/WAIVERS ☐ People's ☐ Defendant's ☐ Joint motion ________ ☐ granted ☐ denied.
☐ Defendant's motion to suppress evidence pursuant to PC1538.5 is ☐ granted ☐ denied.
☐ Defendant's motion to reduce to misdemeanor - PC 17(b)(5) pursuant to the Esteybar case is ☐ granted ☐ denied.
☐ Complaint is amended by interlineation as follows: ________

FINDINGS OF THE COURT Defendant **HELD TO ANSWER** on the following counts:
Ct. 1 PC459/460/462(a)/667.5(c)(21)/12022.5(a); Ct. 2 PC245(A)(2)/12022.5(a)
Ct. 3 PC12021(A)(1); Ct. 4 PC12021(A)(1)

The following counts **DISMISSED** for insufficiency of evidence and defendant **DISCHARGED:**

ARRAIGNMENT ☒ Counsel stipulate that the complaint is deemed to be the Information.
☒ Defendant is duly arraigned, furnished with a copy of Information. ☒ Transcript waived for arraignment. ☒ Appt. of counsel reaffirmed.
☒ Defendant pleads not guilty and denies all allegations.
☒ Defendant waives statutory time for trial. ☒ Fingerprint form filed.

HEARINGS

☐ Preliminary Exam. to resume	________	at ________	in Dept. ____
☐ Arraignment on Information	________	at ________	in Dept. ____
☐ Bail Review	________	at ________	in Dept. ____
☒ Readiness Conference	11/2/04	at 9:30	in Dept. 11
☒ Jury Trial	11/15/04	at 9:00	in Dept. 11 Days left 12
☒ Motions due: 10/12/04			

OTHER
☐ Counsel stipulate that if a motion is filed, the readiness conference date may be advanced/continued to the motion hearing date.
☐ The following witnesses are ordered to return on ________ : ________

CUSTODY STATUS ☒ Deft. **REMANDED** to custody of Sheriff, bail $126,600 ☐ WITHOUT BAIL ☐ Per PC1275 ☐ as set
☐ increased ☐ reduced ☐ Bail Unit Report Ordered re: SOR
☐ Deft. **RELEASED:** ☐ on bail posted $________ ☐ discharged ☐ OR/SOR
☐ to: ________ on ________ at ________

Allan J Preckel
JUDGE OF THE SUPERIOR COURT

Distribution by: ________ on ________ to Jail Deft. Other: ________

SDSC – CR151(Rev 5-01)

PRELIMINARY EXAMINATION – SINGLE DEFENDANT

ECS

SCE243533 DA MAK33301

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

☐ CENTRAL ☐ NORTH ☑ EAST ☐ SOUTH

DATE 11-02-04 AT 09:30 M. 04141108 SUP READINESS CONF 0100

PRESENT: HON HERBERT J. EXARHOS ALLAN J PRECKEL JUDGE PRESIDING DEPARTMENT 011

CLERK A Mautucci REPORTER R. CARLUCCI, CSR# 5552 CSR#

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA K. Mendez

DEPUTY DISTRICT ATTORNEY

VS.

CUNNINGHAM JAMES H B - P.DEFENDERS Gitter, Stacy

DEFENDANT ATTORNEY FOR DEFENDANT (PD/APD/PCC/RETAINED)

VIOLATION OF *PC459/460 Ct 1 *PC245(A)(2) Ct 2 PC12021(A)(1) Ct 3 PC12021(A)(1) Ct 4

ALLEG(S) INT ON FILE / SWN PR

PRIOR(S) Strike: 1 S/F: 1 LANGUAGE

DEFENDANT ☑ PRESENT ☐ NOT PRESENT ☐ NOT PRODUCED 11/15/04

PRELIM / TRIAL DATE CONFIRMED / REMAINS AS SET / VACATED. ☐ READINESS ☐ MOTIONS REMAIN(S) AS SET / VACATED.

READINESS

☐ DEFENDANT ADVISED OF RIGHTS, WAIVES RIGHTS. ☐ DEFT. SWORN & EXAMINED. ☐ DEFENDANT WITHDRAWS "NOT GUILTY" PLEA AND NOW PLEADS

☐ GUILTY ☐ NOLO CONTENDERE TO:

☐ PEOPLE V. WEST PLEA. ☐ COUNSEL & DEFENDANT STIPULATE TO PRELIMINARY / GRAND JURY TRANSCRIPT AS FACTUAL BASIS OF PLEA.

☐ ON MOTION OF COURT / PEOPLE / DEFENDANT COUNT(S)____ REMAINING IS / ARE DISMISSED FOJ / VOP.

☐ ON MOTION OF COURT/ PEOPLE / DEFENDANT ALLEGATION(S)/PRIOR(S)____ REMAINING IS / ARE STRICKEN FOJ / VOP.

☐ PC 1210 ☐ ACCEPTED. ☐ DECLINED. ☐ PC 1000, DEFERRED ENTRY OF JUDGMENT, GRANTED____MOS. / YRS. TIER I / TIER II.

☐ DEFENDANT TO PAY ☐ $____ ADMIN FEE ☐ $____ DEJ RESTITUTION FEE PER PC 1001.90 BY ____.

CUST / STAT

☑ DEFT REMANDED TO THE CUSTODY OF SHERIFF ☐ WITHOUT BAIL ☑ WITH BAIL SET AT / REDUCED TO / INCREASED TO $ 126,000 ☐ PC 1275

☐ DEFT TO REMAIN AT LIBERTY ☐ ON BOND POSTED $____. ☐ ON OR / SOR.

☐ DEFT ORDERED RELEASED FROM CUSTODY ☐ ON OR / SOR ☐ PROBATION ☐ CASE DISMISSED. ☐ ACQUITTED. ☐ THIS CASE ONLY.

FUTURE HRGS

WAIVERS: ☐ STATUTORY TIME PRELIM / TRIAL / JUDGMENT. ☐ PRELIM ☐ SPEEDY TRIAL ☐ HARVEY / ARBUCKLE ☐ PRESENCE AT POST-SENTENCE HRG.

☐ WAIVES ATTY / INTERPRETER CONFLICT FOR THIS HRG. ☐ COMPL. DEEMED INFO, IMMED. ARRAIGNMENT (SEE CRM-2A) ☐ IMMED. SENTENCING (SEE CRM-2B.)

FOURTH AMENDMENT WAIVER: ☐ IS IMPOSED AS A CONDITION OF RELEASE / PROBATION. ☐ REMAINS IN EFFECT. ☐ IS DELETED.

____ IS SET FOR / CONT'D / TRAILED TO ____ AT ____ IN DEPT. ____

ON MOTION OF COURT / PEO. / DEFT. REASON: ____ EST. PRELIM: ____. DAYS LEFT (TRIAL) ____.

☐ READINESS IS SET FOR / CONT'D TO ____ AT ____ IN DEPT. ____ MOTIONS DUE: ____

BONDS / WRRNTS

☐ BENCH WARRANT TO ISSUE, BAIL SET AT $____. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ____.

☐ BENCH WARRANT ISSUED / ORDERED ____ IS RECALLED / RESCINDED.

☐ BAIL IS ☐ EXONERATED ☐ FORFEITED. AMOUNT $____. BOND NO. ____

BOND COMPANY ____ AGENT ____

☐ BAIL FORFEITURE OF ____ IS SET ASIDE / REINSTATED / EXONERATED. SURETY TO PAY $____ W/IN 30 DAYS. ☐ FEES WAIVED.

MH

☐ PROCEEDING SUSPENDED PER PC 1368. MENTAL COMPETENCY EXAMINATION ON ____ AT ____

BY FORENSIC PSYCHIATRY CLINIC. FEMALES, ROOM 1003, CENTRAL COURTHOUSE; MALES, CENTRAL DETENTION FACILITY.

HEARING ON ____ AT ____ IN DEPARTMENT ____, CENTRAL COURTHOUSE.

☐ THE SHERIFF IS ORDERED TO TRANSPORT DEFENDANT TO AND FROM THE EXAMINATION AND HEARING SHOWN ABOVE.

PROBTN / REFRRL

☐ REPORT ORDERED: ☐ PRESENTENCE. ☐ POST-SENTENCE, COPY TO BE SENT DIRECTLY TO DEPT. OF CORRECTIONS PER PC 1203c.

☐ DEFENDANT FOUND GUILTY BY ☐ JURY VERDICT. ☐ COURT FINDING. ☐ DEFT. WAIVES POST-SENTENCE INTERVIEW.

☐ DEFT. ORDERED TO REMAIN IN COURTROOM UNTIL INTERVIEWED BY COURT PROBATION OFFICER FOR A LIMITED REPORT.

☐ DEFENDANT REFERRED TO / ORDERED TO REPORT IMMEDIATELY TO PROBATION DEPT. FOR INTERVIEW: ☐ 3977 OHIO STREET, SAN DIEGO

☐ 330 W. BROADWAY, 5TH FL, SAN DIEGO ☐ 325 S. MELROSE, VISTA ☐ 250 E. MAIN ST., 8TH FL, EL CAJON ☐ 1727 SWEETWATER ROAD, NATIONAL CITY.

OTHER:

111

Allan J Preckel

JUDGE OF THE SUPERIOR COURT

SDSC CRM-2C(Rev. 5-04)

CRIMINAL MINUTES - MISCELLANEOUS

ECS

SCE243538 DA MAK33301

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

☐ CENTRAL ☐ NORTH ☑ EAST ☐ SOUTH

DATE 11-15-04 AT 09:00 M. 04141108 TRIAL CALL 0101

PRESENT: HON HERBERT J. EXARHOS ALLAN J. PRECKEL JUDGE PRESIDING DEPARTMENT 011

CLERK Angela Narducci REPORTER Peabody, Dana 6332 CSR#

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA D. Rilk

DEPUTY DISTRICT ATTORNEY

VS.

CUNNINGHAM JAMES H B - S.GULLEY

DEFENDANT ATTORNEY FOR DEFENDANT (PD/APD/PCC/RETAINED)

VIOLATION OF *PC459/460 Ct. 1 *PC245(A)(2) Ct. 2 PC12021(A)(1) Ct. 3 PC12021(A)(1) Ct. 4

ALLEG(S) INT ON FILE / SWN FR

PRIOR(S) Prison Ser: 1; Strike: 1 LANGUAGE

DEFENDANT ☑ PRESENT ☐ NOT PRESENT ☐ NOT PRODUCED

PRELIM / TRIAL DATE CONFIRMED / REMAINS AS SET / VACATED. ☐ READINESS ☐ MOTIONS REMAIN(S) AS SET / VACATED.

READINESS

☐ DEFENDANT ADVISED OF RIGHTS, WAIVES RIGHTS. ☐ DEFT. SWORN & EXAMINED. ☐ DEFENDANT WITHDRAWS "NOT GUILTY" PLEA AND NOW PLEADS ☐ GUILTY ☐ NOLO CONTENDERE TO:

☐ PEOPLE V. WEST PLEA. ☐ COUNSEL & DEFENDANT STIPULATE TO PRELIMINARY / GRAND JURY TRANSCRIPT AS FACTUAL BASIS OF PLEA.

☐ ON MOTION OF COURT / PEOPLE / DEFENDANT COUNT(S)________ REMAINING IS / ARE DISMISSED FOJ / VOP.

☐ ON MOTION OF COURT/ PEOPLE / DEFENDANT ALLEGATION(S)/PRIOR(S)________ REMAINING IS / ARE STRICKEN FOJ / VOP.

☐ PC 1210 ☐ ACCEPTED. ☐ DECLINED. ☐ PC 1000, DEFERRED ENTRY OF JUDGMENT, GRANTED____MOS. / YRS. TIER I / TIER II.

☐ DEFENDANT TO PAY ☐ $________ ADMIN FEE ☐ $________ DEJ RESTITUTION FEE PER PC 1001.90 BY ________.

CUST STAT

☑ DEFT REMANDED TO THE CUSTODY OF SHERIFF ☐ WITHOUT BAIL ☑ WITH BAIL SET AT / REDUCED TO / INCREASED TO $ 126,400. ☐ PC 1275

☐ DEFT TO REMAIN AT LIBERTY ☐ ON BOND POSTED $________. ☐ ON OR / SOR.

☐ DEFT ORDERED RELEASED FROM CUSTODY ☐ ON OR / SOR ☐ PROBATION ☐ CASE DISMISSED. ☐ ACQUITTED. ☐ THIS CASE ONLY.

FUTURE HRGS

WAIVERS: ☐ STATUTORY TIME PRELIM / TRIAL / JUDGMENT. ☐ PRELIM ☐ SPEEDY TRIAL ☐ HARVEY / ARBUCKLE ☐ PRESENCE AT POST-SENTENCE HRG.

☐ WAIVES ATTY / INTERPRETER CONFLICT FOR THIS HRG. ☐ COMPL. DEEMED INFO, IMMED. ARRAIGNMENT (SEE CRM-2A) ☐ IMMED. SENTENCING (SEE CRM-2B.)

FOURTH AMENDMENT WAIVER: ☐ IS IMPOSED AS A CONDITION OF RELEASE / PROBATION. ☐ REMAINS IN EFFECT. ☐ IS DELETED.

Trial IS SET FOR / CONT'D / TRAILED TO 11/22/04 AT 9AM IN DEPT. 11

ON MOTION OF COURT / PEO. / DEFT. REASON: Stip EST. PRELIM: ____ DAYS LEFT (TRIAL) 5.

☐ READINESS IS SET FOR / CONT'D TO ________ AT ____ IN DEPT. ____ MOTIONS DUE: ________

BONDS WRRNTS

☐ BENCH WARRANT TO ISSUE, BAIL SET AT $________. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ________.

☐ BENCH WARRANT ISSUED / ORDERED ________ IS RECALLED / RESCINDED.

☐ BAIL IS ☐ EXONERATED ☐ FORFEITED. AMOUNT $________. BOND NO. ________

BOND COMPANY ________ AGENT ________

☐ BAIL FORFEITURE OF ________ IS SET ASIDE / REINSTATED / EXONERATED. SURETY TO PAY $________ W/IN 30 DAYS. ☐ FEES WAIVED.

MH

☐ PROCEEDING SUSPENDED PER PC 1368. MENTAL COMPETENCY EXAMINATION ON ________ AT ________

BY FORENSIC PSYCHIATRY CLINIC. FEMALES, ROOM 1003, CENTRAL COURTHOUSE; MALES, CENTRAL DETENTION FACILITY.

HEARING ON ________ AT ________ IN DEPARTMENT ________, CENTRAL COURTHOUSE.

☐ THE SHERIFF IS ORDERED TO TRANSPORT DEFENDANT TO AND FROM THE EXAMINATION AND HEARING SHOWN ABOVE.

PROBTN REFERRL

☐ REPORT ORDERED: ☐ PRESENTENCE. ☐ POST-SENTENCE, COPY TO BE SENT DIRECTLY TO DEPT. OF CORRECTIONS PER PC 1203c.

☐ DEFENDANT FOUND GUILTY BY ☐ JURY VERDICT. ☐ COURT FINDING. ☐ DEFT. WAIVES POST-SENTENCE INTERVIEW.

☐ DEFT. ORDERED TO REMAIN IN COURTROOM UNTIL INTERVIEWED BY COURT PROBATION OFFICER FOR A LIMITED REPORT.

☐ DEFENDANT REFERRED TO / ORDERED TO REPORT IMMEDIATELY TO PROBATION DEPT. FOR INTERVIEW: ☐ 3977 OHIO STREET, SAN DIEGO ☐ 330 W. BROADWAY, 5TH FL, SAN DIEGO ☐ 325 S. MELROSE, VISTA ☐ 250 E. MAIN ST., 8TH FL, EL CAJON ☐ 1727 SWEETWATER ROAD, NATIONAL CITY.

OTHER:

Processed by Debbie P

NOV 15 2004

Allan J Preckel

JUDGE OF THE SUPERIOR COURT

SDSC CRM-2C(Rev. 5-04)

CRIMINAL MINUTES - MISCELLANEOUS

ECS

SCE243538 DA MAK33301

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

☐ CENTRAL ☐ NORTH ☒ EAST ☐ SOUTH

DATE 11-22-04 AT 09:00 M. 04141108 TRIAL CALL

0102

PRESENT: HON HERBERT J. EXARHOS JUDGE PRESIDING DEPARTMENT 011

CLERK K. FAHEY REPORTER PEABODY, DANA CSR#

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA D. [signature] DEPUTY DISTRICT ATTORNEY

VS.

CUNNINGHAM JAMES H DEFENDANT

H - S. GULLEY ATTORNEY FOR DEFENDANT (PD/APD/PCC/RETAINED)

VIOLATION OF *PC459/460 Ct 1 *PC245(A)(2) Ct 2 PC12021(A)(1) Ct 3 PC12021(A)(1) Ct 4

ALLEG(S) INT ON FILE / SWNPR

PRIOR(S) Strk: 1 S/F: 1 LANGUAGE

DEFENDANT ☒ PRESENT ☐ NOT PRESENT ☐ NOT PRODUCED

READINESS

PRELIM / TRIAL DATE CONFIRMED / REMAINS AS SET / VACATED. ☐ READINESS ☐ MOTIONS REMAIN(S) AS SET / VACATED.

☐ DEFENDANT ADVISED OF RIGHTS, WAIVES RIGHTS. ☐ DEFT. SWORN & EXAMINED. ☐ DEFENDANT WITHDRAWS "NOT GUILTY" PLEA AND NOW PLEADS

☐ GUILTY ☐ NOLO CONTENDERE TO:

☐ PEOPLE V. WEST PLEA. ☐ COUNSEL & DEFENDANT STIPULATE TO PRELIMINARY / GRAND JURY TRANSCRIPT AS FACTUAL BASIS OF PLEA.

☐ ON MOTION OF COURT / PEOPLE / DEFENDANT COUNT(S) ________ REMAINING IS / ARE DISMISSED FOJ / VOP.

☐ ON MOTION OF COURT/ PEOPLE / DEFENDANT ALLEGATION(S)/PRIOR(S) ________ REMAINING IS / ARE STRICKEN FOJ / VOP.

☐ PC 1210 ☐ ACCEPTED. ☐ DECLINED. ☐ PC 1000, DEFERRED ENTRY OF JUDGMENT, GRANTED ____ MOS. / YRS. TIER I / TIER II.

☐ DEFENDANT TO PAY ☐ $ ____ ADMIN FEE ☐ $ ____ DEJ RESTITUTION FEE PER PC 1001.90 BY ____.

CUST / STAT

☒ DEFT REMANDED TO THE CUSTODY OF SHERIFF ☐ WITHOUT BAIL ☒ WITH BAIL SET AT / REDUCED TO / INCREASED TO $ 126,600 ☐ PC 1275

☐ DEFT TO REMAIN AT LIBERTY ☐ ON BOND POSTED $ ____. ☐ ON OR / SOR.

☐ DEFT ORDERED RELEASED FROM CUSTODY ☐ ON OR / SOR ☐ PROBATION ☐ CASE DISMISSED. ☐ ACQUITTED. ☐ THIS CASE ONLY.

FUTURE HRGS

WAIVERS: ☐ STATUTORY TIME PRELIM / TRIAL / JUDGMENT. ☐ PRELIM ☐ SPEEDY TRIAL ☐ HARVEY / ARBUCKLE ☐ PRESENCE AT POST-SENTENCE HRG.

☐ WAIVES ATTY / INTERPRETER CONFLICT FOR THIS HRG. ☐ COMPL. DEEMED INFO, IMMED. ARRAIGNMENT (SEE CRM-2A) ☐ IMMED. SENTENCING (SEE CRM-2B.)

FOURTH AMENDMENT WAIVER: ☐ IS IMPOSED AS A CONDITION OF RELEASE / PROBATION. ☐ REMAINS IN EFFECT. ☐ IS DELETED.

Trial IS SET FOR / CONT'D / TRAILED TO 11-29-04 AT 9:00A IN DEPT. 11

ON MOTION OF COURT / PEO. / DEFT. REASON: ________ EST. PRELIM: ____. DAYS LEFT (TRIAL) Ø

☐ READINESS IS SET FOR / CONT'D TO ____ AT ____ IN DEPT. ____ MOTIONS DUE: ____

BONDS / WRRNTS

☐ BENCH WARRANT TO ISSUE, BAIL SET AT $ ____. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ____.

☐ BENCH WARRANT ISSUED / ORDERED ____ IS RECALLED / RESCINDED.

☐ BAIL IS ☐ EXONERATED ☐ FORFEITED. AMOUNT $ ____. BOND NO. ____

BOND COMPANY ____ AGENT ____

☐ BAIL FORFEITURE OF ____ IS SET ASIDE / REINSTATED / EXONERATED. SURETY TO PAY $ ____ W/IN 30 DAYS. ☐ FEES WAIVED.

MH

☐ PROCEEDING SUSPENDED PER PC 1368. MENTAL COMPETENCY EXAMINATION ON ____ AT ____

BY FORENSIC PSYCHIATRY CLINIC. FEMALES, ROOM 1003, CENTRAL COURTHOUSE; MALES, CENTRAL DETENTION FACILITY.

HEARING ON ____ AT ____ IN DEPARTMENT ____, CENTRAL COURTHOUSE.

☐ THE SHERIFF IS ORDERED TO TRANSPORT DEFENDANT TO AND FROM THE EXAMINATION AND HEARING SHOWN ABOVE.

PROBTN / REFRL

☐ REPORT ORDERED: ☐ PRESENTENCE. ☐ POST-SENTENCE, COPY TO BE SENT DIRECTLY TO DEPT. OF CORRECTIONS PER PC 1203c.

☐ DEFENDANT FOUND GUILTY BY ☐ JURY VERDICT. ☐ COURT FINDING. ☐ DEFT. WAIVES POST-SENTENCE INTERVIEW.

☐ DEFT. ORDERED TO REMAIN IN COURTROOM UNTIL INTERVIEWED BY COURT PROBATION OFFICER FOR A LIMITED REPORT.

☐ DEFENDANT REFERRED TO / ORDERED TO REPORT IMMEDIATELY TO PROBATION DEPT. FOR INTERVIEW: ☐ 3977 OHIO STREET, SAN DIEGO

☐ 330 W. BROADWAY, 5TH FL, SAN DIEGO ☐ 325 S. MELROSE, VISTA ☐ 250 E. MAIN ST., 8TH FL, EL CAJON ☐ 1727 SWEETWATER ROAD, NATIONAL CITY.

OTHER:

[signature]

JUDGE OF THE SUPERIOR COURT

4

SDSC CRM-2C(Rev. 5-04)

CRIMINAL MINUTES - MISCELLANEOUS

SCE 243538 DA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DATE 11-29-04 AT ______ M. Trial Call

0103

PRESENT: HON Herbert J. Exarhos JUDGE PRESIDING DEPARTMENT 11

CLERK K. FAHEY REPORTER DANA PEABODY, #6332 CSR#

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.

D Kuck
DEPUTY DISTRICT ATTORNEY

Cunningham James H
DEFENDANT

S. Gulley
ATTORNEY FOR DEFENDANT (PD/APD/RCC/RETAINED)

VIOLATION OF PC459/460 and more charges

INTERPRETER ______ OATH ON FILE/SWORN

LANGUAGE ______

DEFENDANT ☒ PRESENT ☐ NOT PRESENT. TRIAL DATE ______ LATEST INFO./INDICT. FILED ______.

READINESS

☐ CASE NOT NEGOTIABLE, TRIAL DATE IS CONFIRMED. ☐ TRIAL DATE REMAINS AS SET/VACATED. ☐ READINESS ☐ MOTIONS REMAIN AS SET/VACATED.

☐ DEFENDANT ADVISED OF RIGHTS, WAIVES RIGHTS. ☐ DEFT. SWORN & EXAMINED. ☐ DEFENDANT WITHDRAWS "NOT GUILTY" PLEA AND NOW PLEADS

☐ GUILTY ☐ NOLO CONTENDERE TO:

☐ PEOPLE V. WEST PLEA. ☐ COUNSEL & DEFENDANT STIPULATE TO PRELIMINARY/GRAND JURY TRANSCRIPT AS FACTUAL BASIS OF PLEA.

☐ ON MOTION OF COURT/DDA/DEFENDANT COUNT(S) ______ REMAINING IS/ARE DISMISSED FOJ/VOP.

☐ ON MOTION OF COURT/DDA/DEFENDANT ALLEGATION(S)/PRIOR(S) ______ REMAINING IS/ARE STRICKEN FOJ/VOP.

CUSTODY STATUS

☒ DEFENDANT REMANDED TO THE CUSTODY OF SHERIFF ☐ WITHOUT BAIL ☒ WITH BAIL SET AT $ 126,600—

☐ DEFENDANT ORDERED RELEASED FROM CUSTODY ☐ ON OWN/SUPERVISED RECOGNIZANCE ☐ CASE DISMISSED ☐ ACQUITTED. ☐ THIS CASE ONLY.

☐ DEFENDANT TO REMAIN AT LIBERTY ☐ ON BOND POSTED $ ______ ☐ ON OWN/SUPERVISED RECOGNIZANCE.

☐ BAIL IS SET AT/REDUCED TO/INCREASED TO $ ______.

FUT HRGS

☒ DEFT'S WAIVERS: ☒ STATUTORY TIME PRON. JUDGMENT/TRIAL ☐ HARVEY/ARBUCKLE ☐ PRESENCE AT POST-SENTENCE HEARING.

Trial IS SET FOR/CONT'D/TRAILED TO 1-3-05 AT 9:00 AM

IN DEPARTMENT 11 ON MOTION OF COURT/DDA/DEFENDANT. DAYS LEFT 10

☐ READINESS IS SET FOR/CONT'D TO ______ AT ______ IN DEPT. ______ MOTIONS DUE: ______

BONDS WRRNTS

☐ BENCH WARRANT TO ISSUE, BAIL SET AT $ ______. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ______.

☐ BENCH WARRANT ISSUED/ORDERED ______ IS RECALLED/RESCINDED.

☐ BAIL IS ☐ EXONERATED ☐ FORFEITED. AMOUNT $ ______. BOND NO. ______.

BOND COMPANY ______ AGENT ______.

☐ BAIL FORFEITURE OF ______ IS SET ASIDE/REINSTATED/EXONERATED. SURETY TO PAY $ ______ W/IN 30 DAYS.

MH

☐ PROCEEDING SUSPENDED PER PC 1368. MENTAL COMPETENCY EXAMINATION ON ______ AT ______ IN ROOM 1003, PSYCHIATRIC EXAMINING FACILITY.

HEARING ON ______ AT ______ IN DEPARTMENT ______.

☐ THE SHERIFF IS ORDERED TO TRANSPORT DEFENDANT TO AND FROM THE EXAMINATION AND HEARING SHOWN ABOVE.

PROBTN REFRRL

☐ REPORT ORDERED: ☐ PRESENTENCE ☐ POST-SENTENCE, COPY TO BE SENT DIRECTLY TO DEPT. OF CORRECTIONS PER PC 1203c.

☐ DEFENDANT FOUND GUILTY BY ☐ JURY VERDICT ☐ COURT FINDING. ☐ DEFT. WAIVES POST-SENTENCE INTERVIEW.

☐ DEFT. ORDERED TO REMAIN IN COURTROOM UNTIL INTERVIEWED BY COURT PROBATION OFFICER FOR A LIMITED REPORT.

☐ DEFENDANT REFERRED TO/ORDERED TO REPORT IMMEDIATELY TO PROBATION DEPT. BELOW FOR INTERVIEW:

☐ 330 W. BROADWAY, 5TH FL, SAN DIEGO ☐ 325 S. MELROSE, VISTA ☐ 1460 E. MAIN, EL CAJON ☐ 1727 SWEETWATER, NATIONAL CITY.

OTHER: The Sheriff is ordered to have the deft seen by a doctor for his eye injury and be provided corrective lens if necessary and to have him examined by the jail psychiatrists

Herbert Exarhos
JUDGE OF THE SUPERIOR COURT

SDSC CR-2C(Rev. 6-99)

CRIMINAL MINUTES - MISCELLANEOUS

ECS

SCE243538 DA MAK33301

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DATE 01-03-05 AT 09:00 M. 04141108 ☐ CENTRAL ☐ NORTH ☑ EAST ☐ SOUTH TRIAL CALL 0104

PRESENT: HON HERBERT J. EXARHOS JUDGE PRESIDING DEPARTMENT 011

CLERK K. FAHEY REPORTER DANA PEABODY, #5332 CSR#

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA LINKD D. Link DEPUTY DISTRICT ATTORNEY

VS.

CUNNINGHAM JAMES H DEFENDANT B - S.GULLEY ATTORNEY FOR DEFENDANT (PD/APD/PCC/RETAINED)

VIOLATION OF *PC459/460 ct 1 *PC245(A)(2) ct 2 PC12021(A)(1) ct 3 PC12021(A)(1) ct 4

ALLEG(S) INT ON FILE / SWR PR

PRIOR(S) Strike: 1 SPF: 1 LANGUAGE

DEFENDANT ☒ PRESENT ☐ NOT PRESENT ☐ NOT PRODUCED

READINESS

PRELIM / TRIAL DATE CONFIRMED / REMAINS AS SET / VACATED. ☐ READINESS ☐ MOTIONS REMAIN(S) AS SET / VACATED.

☐ DEFENDANT ADVISED OF RIGHTS, WAIVES RIGHTS. ☐ DEFT. SWORN & EXAMINED. ☐ DEFENDANT WITHDRAWS "NOT GUILTY" PLEA AND NOW PLEADS

☐ GUILTY ☐ NOLO CONTENDERE TO:

☐ PEOPLE V. WEST PLEA. ☐ COUNSEL & DEFENDANT STIPULATE TO PRELIMINARY / GRAND JURY TRANSCRIPT AS FACTUAL BASIS OF PLEA.

☐ ON MOTION OF COURT / PEOPLE / DEFENDANT COUNT(S)____ REMAINING IS / ARE DISMISSED FOJ / VOP.

☐ ON MOTION OF COURT/ PEOPLE / DEFENDANT ALLEGATION(S)/PRIOR(S)____ REMAINING IS / ARE STRICKEN FOJ / VOP.

☐ PC 1210 ☐ ACCEPTED. ☐ DECLINED. ☐ PC 1000, DEFERRED ENTRY OF JUDGMENT, GRANTED____MOS. / YRS. TIER I / TIER II.

☐ DEFENDANT TO PAY ☐ $____ ADMIN FEE ☐ $____ DEJ RESTITUTION FEE PER PC 1001.90 BY ____.

CUST / STAT

☒ DEFT REMANDED TO THE CUSTODY OF SHERIFF ☐ WITHOUT BAIL ☒ WITH BAIL SET AT / REDUCED TO / INCREASED TO $ 126,600. ☐ PC 1275

☐ DEFT TO REMAIN AT LIBERTY ☐ ON BOND POSTED $____. ☐ ON OR / SOR.

☐ DEFT ORDERED RELEASED FROM CUSTODY ☐ ON OR / SOR ☐ PROBATION ☐ CASE DISMISSED. ☐ ACQUITTED. ☐ THIS CASE ONLY.

FUTURE HRGS

WAIVERS: ☐ STATUTORY TIME PRELIM / TRIAL / JUDGMENT. ☐ PRELIM ☐ SPEEDY TRIAL ☐ HARVEY / ARBUCKLE ☐ PRESENCE AT POST-SENTENCE HRG.

☐ WAIVES ATTY / INTERPRETER CONFLICT FOR THIS HRG. ☐ COMPL. DEEMED INFO, IMMED. ARRAIGNMENT (SEE CRM-2A) ☐ IMMED. SENTENCING (SEE CRM-2B.)

FOURTH AMENDMENT WAIVER: ☐ IS IMPOSED AS A CONDITION OF RELEASE / PROBATION. ☐ REMAINS IN EFFECT. ☐ IS DELETED.

Trial IS SET FOR / CONT'D (TRAILED) TO 1-4-05 AT 9:00A IN DEPT. 11

ON MOTION OF COURT / PEO. / DEFT. REASON: ____ EST. PRELIM: ____. DAYS LEFT (TRIAL) 9

☐ READINESS IS SET FOR / CONT'D TO ____ AT ____ IN DEPT. ____ MOTIONS DUE: ____

BONDS / WRRNTS

☐ BENCH WARRANT TO ISSUE, BAIL SET AT $____. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ____.

☐ BENCH WARRANT ISSUED / ORDERED ____ IS RECALLED / RESCINDED.

☐ BAIL IS ☐ EXONERATED ☐ FORFEITED. AMOUNT $____. BOND NO. ____

BOND COMPANY ____ AGENT ____

☐ BAIL FORFEITURE OF ____ IS SET ASIDE / REINSTATED / EXONERATED. SURETY TO PAY $____ W/IN 30 DAYS. ☐ FEES WAIVED.

MH

☐ PROCEEDING SUSPENDED PER PC 1368. MENTAL COMPETENCY EXAMINATION ON ____ AT ____

BY FORENSIC PSYCHIATRY CLINIC. FEMALES, ROOM 1003, CENTRAL COURTHOUSE; MALES, CENTRAL DETENTION FACILITY.

HEARING ON ____ AT ____ IN DEPARTMENT ____, CENTRAL COURTHOUSE.

☐ THE SHERIFF IS ORDERED TO TRANSPORT DEFENDANT TO AND FROM THE EXAMINATION AND HEARING SHOWN ABOVE.

PROBTN / REFRL

☐ REPORT ORDERED: ☐ PRESENTENCE. ☐ POST-SENTENCE, COPY TO BE SENT DIRECTLY TO DEPT. OF CORRECTIONS PER PC 1203c.

☐ DEFENDANT FOUND GUILTY BY ☐ JURY VERDICT. ☐ COURT FINDING. ☐ DEFT. WAIVES POST-SENTENCE INTERVIEW.

☐ DEFT. ORDERED TO REMAIN IN COURTROOM UNTIL INTERVIEWED BY COURT PROBATION OFFICER FOR A LIMITED REPORT.

☐ DEFENDANT REFERRED TO / ORDERED TO REPORT IMMEDIATELY TO PROBATION DEPT. FOR INTERVIEW: ☐ 3977 OHIO STREET, SAN DIEGO

☐ 330 W. BROADWAY, 5TH FL, SAN DIEGO ☐ 325 S. MELROSE, VISTA ☐ 250 E. MAIN ST., 8TH FL, EL CAJON ☐ 1727 SWEETWATER ROAD, NATIONAL CITY.

OTHER:

3

JUDGE OF THE SUPERIOR COURT

CRIMINAL MINUTES - MISCELLANEOUS

CE243538A MAK 3330

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DATE 1-04-05 AT 5:10 M. 0105 Trial - call

PRESENT: HON Herbert J. Exarhos JUDGE PRESIDING DEPARTMENT 11

CLERK L. FAHEY REPORTER DANA PEABODY, #6332 CSR#

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA VS. Cunningham, James H. — DEFENDANT

D. Lincks — DEPUTY DISTRICT ATTORNEY

Culley, Stacy — ATTORNEY FOR DEFENDANT (PD/APD/PCC/RETAINED)

VIOLATION OF PC 459/460 ct 1; PC 245(a)(2) ct 2; PC 12021(a)(1) ct 3; 12022(a)(1) ct 4 Alleg: (1) ct 4 Ohk

INTERPRETER ______ OATH ON FILE/SWORN

LANGUAGE ______

DEFENDANT ☒ PRESENT ☐ NOT PRESENT. TRIAL DATE ______ LATEST INFO./INDICT. FILED ______

READINESS

☐ CASE NOT NEGOTIABLE, TRIAL DATE IS CONFIRMED. ☐ TRIAL DATE REMAINS AS SET/VACATED. ☐ READINESS ☐ MOTIONS REMAIN AS SET/VACATED.

☐ DEFENDANT ADVISED OF RIGHTS, WAIVES RIGHTS. ☐ DEFT. SWORN & EXAMINED. ☐ DEFENDANT WITHDRAWS "NOT GUILTY" PLEA AND NOW PLEADS ☐ GUILTY ☐ NOLO CONTENDERE TO:

☐ PEOPLE V. WEST PLEA. ☐ COUNSEL & DEFENDANT STIPULATE TO PRELIMINARY/GRAND JURY TRANSCRIPT AS FACTUAL BASIS OF PLEA.

☐ ON MOTION OF COURT/DDA/DEFENDANT COUNT(S) ______ REMAINING IS/ARE DISMISSED FOJ/VOP.

☐ ON MOTION OF COURT/DDA/DEFENDANT ALLEGATION(S)/PRIOR(S) ______ REMAINING IS/ARE STRICKEN FOJ/VOP.

CUSTODY STATUS

☒ DEFENDANT REMANDED TO THE CUSTODY OF SHERIFF ☐ WITHOUT BAIL ☒ WITH BAIL SET AT $ 126,600

☐ DEFENDANT ORDERED RELEASED FROM CUSTODY ☐ ON OWN/SUPERVISED RECOGNIZANCE ☐ CASE DISMISSED ☐ ACQUITTED. ☐ THIS CASE ONLY.

☐ DEFENDANT TO REMAIN AT LIBERTY ☐ ON BOND POSTED $ ______ ☐ ON OWN/SUPERVISED RECOGNIZANCE.

☐ BAIL IS SET AT/REDUCED TO/INCREASED TO $ ______.

FUT HRGS

☐ DEFT'S WAIVERS: ☐ STATUTORY TIME PRON. JUDGMENT/TRIAL ☐ HARVEY/ARBUCKLE ☐ PRESENCE AT POST-SENTENCE HEARING.

______ IS SET FOR/CONT'D/TRAILED TO ______ AT ______

IN DEPARTMENT ______ ON MOTION OF COURT/DDA/DEFENDANT. DAYS LEFT ______.

☐ READINESS IS SET FOR/CONT'D TO ______ AT ______ IN DEPT. ______ MOTIONS DUE: ______

BONDS WRRNTS

☐ BENCH WARRANT TO ISSUE, BAIL SET AT $ ______. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ______.

☐ BENCH WARRANT ISSUED/ORDERED ______ IS RECALLED/RESCINDED.

☐ BAIL IS ☐ EXONERATED ☐ FORFEITED. AMOUNT $ ______. BOND NO. ______.

BOND COMPANY ______ AGENT ______.

☐ BAIL FORFEITURE OF ______ IS SET ASIDE/REINSTATED/EXONERATED. SURETY TO PAY $ ______ W/IN 30 DAYS.

MH

☐ PROCEEDING SUSPENDED PER PC 1368. MENTAL COMPETENCY EXAMINATION ON ______ AT ______ IN ROOM 1003, PSYCHIATRIC EXAMINING FACILITY.

HEARING ON ______ AT ______ IN DEPARTMENT ______.

☐ THE SHERIFF IS ORDERED TO TRANSPORT DEFENDANT TO AND FROM THE EXAMINATION AND HEARING SHOWN ABOVE.

PROBATN REFRL

☐ REPORT ORDERED: ☐ PRESENTENCE ☐ POST-SENTENCE, COPY TO BE SENT DIRECTLY TO DEPT. OF CORRECTIONS PER PC 1203c.

☐ DEFENDANT FOUND GUILTY BY ☐ JURY VERDICT ☐ COURT FINDING. ☐ DEFT. WAIVES POST-SENTENCE INTERVIEW.

☐ DEFT. ORDERED TO REMAIN IN COURTROOM UNTIL INTERVIEWED BY COURT PROBATION OFFICER FOR A LIMITED REPORT.

☐ DEFENDANT REFERRED TO/ORDERED TO REPORT IMMEDIATELY TO PROBATION DEPT. BELOW FOR INTERVIEW:

☐ 330 W. BROADWAY, 5TH FL, SAN DIEGO ☐ 325 S. MELROSE, VISTA ☐ 1460 E. MAIN, EL CAJON ☐ 1727 SWEETWATER, NATIONAL CITY.

OTHER: Assigned to D-9, Judge McGrath

2

[signature]

JUDGE OF THE SUPERIOR COURT

SDSC CR-2C(Rev. 6-99)

CRIMINAL MINUTES - MISCELLANEOUS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
El Cajon Branch

DATE: 1-4-05 DEPT: 9 REPORTER: I. PERKINS CSR#:12727

PRESENT: WILLIAM J. McGRATH, JUDGE

CLERK: J. NEAL PAGE 1 OF 2

BAILIFF: M. WAITE REPORTERS' ADDRESS: P.O. BOX 128
SAN DIEGO, CA 92112-410

CASE# SCE243538 **DDA# MAK333`**

People Of The State Of California,
Plaintiff **by: DAN LINK**
V.

JAMES HENRY CUNNINGHAM,
Defendant **by: STACY GULLEY**

10:58 a.m. Court convenes in the trial by jury transferred from Department 11. The People are present represented by DDA Dan Link. The defendant is present in custody with bail previously set in the sum of $126,600.00 represented by Attorney Stacy Gulley. In limine motions are discussed. Court makes the following rulings:

911 tape will be played over objection by defense;
Defense motion to redact portion of transcript relating to defendant's prior conviction is denied;
People's request to impeach defendant with prior convictions. Motion is granted as defendant's prior PC12021(a) conviction. Motion is denied as to prior robbery conviction.
Joint motion to exclude witnesses is granted.
Parties are not to refer to people's witness as being homeless, only that the People are paying expenses to house witness.

11:28 a.m. **TRIAL COMMENCES** when the panel of prospective jurors are present in the courtroom. Juror No. 4104217 is not present. The jury clerk is notified and informs the Court that she left a message on an answering machine at the juror's home. The Court makes introductory remarks and reads the information. The Court further introduces counsel, the defendant and the names of the witnesses. Prospective jurors are sworn as to their qualifications to serve as trial jurors. Voir dire commences.

12:06 p.m. Prospective jurors are admonished and excused for luncheon recess until 1:30 p.m., with the exception of a prospective juror who is briefly questioned and excused for luncheon recess.

1:40 p.m. Court is again in session. All parties as previously noted and prospective jurors are present. Voir dire resumes.

CASE # SCE243538

DEFENDANT: JAMES HENRY CUNNINGHAM **DATE: 1-4-05**

2:45 p.m. Prospective jurors are admonished and excused for a break until 3:00 p.m., with the exception of a prospective juror, who is briefly questioned and excused for a break.

3:05 p.m. Court is again in session. All parties as previously noted and prospective jurors are present. Voir dire resumes. Court receives a phone call from missing juror. The clerk notifies the juror to report to Department 9 at 1-5-04 at 8:45 a.m. to explain her failure to appear.

4:22 p.m. Prospective jurors are admonished and excused for a break. Out of the presence of the jury, Defense Wheeler motion is denied by Court.

4:34 p.m. Prospective jurors are again present. Voir dire resumes.

4:40 p.m. Twelve individuals are sworn to serve as trial jurors. Two individuals are sworn to serve as alternate jurors. Remaining jurors are thanked and excused. Jurors are admonished and excused for evening recess until 1-5-05 at 9:15 a.m. Defendant remains in custody of the Sheriff with bail previously set in the sum of $126,600.00. Court is adjourned.

Jn

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
El Cajon Branch

DATE: 1-5-05 DEPT: 9 REPORTER: I. PERKINS CSR#:12727

PRESENT: WILLIAM J. McGRATH, JUDGE

CLERK: J. NEAL PAGE 1 OF 2

BAILIFF: M. WAITE REPORTERS' ADDRESS: P.O. BOX 128
SAN DIEGO, CA 92112-410

CASE# SCE243538 **DDA# MAK333`**

People Of The State Of California,
Plaintiff **by: DAN LINK**

V.

JAMES HENRY CUNNINGHAM,
Defendant **by: STACY GULLEY**

9:16 a.m. Court convenes in the trial by jury continued from 1-4-05. The People are present represented by DDA Dan Link. The defendant is present in custody with bail previously set in the sum of $126,600.00 represented by Attorney Stacy Gulley. Juror no. 4104217 having failed to appear or notify the Court by 8:45 a.m. of her non-appearance, Court orders a warrant with bail set at $500.00 and directs the SDSO to serve the warrant instructing the juror to appear 1-10-05 at 8:30 a.m. in Department 9.

9:20 a.m. **TRIAL RESUMES** when twelve jurors and two alternate jurors are present. The Court gives preliminary instructions.

9:36 a.m. DDA Dan Link presents opening statement on behalf of the People.

9:45 a.m. Defense reserves opening statement. People call **JOSE CASTRO**, who is sworn and examined. The following People's exhibits are marked for identification:

No. 1 **White photo board with 6 photographs of apartment**
No. 2 **White photo board with diagram of apartment**

10:36 a.m. Jurors admonished and excused for a break until 11:00 a.m., when Court is again in session. All parties as previously noted and jurors are present. People call **REBECCA KNOX,** who is sworn and examined.

11:16 a.m. A copy of transcript previously marked as Court's Exhibit No. 1 is given to each juror. **PEOPLE'S EXHIBIT NO. 7 – Tape of 911 call is marked for identification.** Tape is played to the jury until 11:22 a.m., when transcripts are collected by the bailiff and examination of **REBECCA KNOX** resumes. **People exhibit No 3 – Stevens Model 820B Sawed-off shotgun is marked for identification. Defense exhibit A - El Cajon Police Department Statement Form of Rebecca Knox is marked for identification.**

11:46 a.m. People recall **JOSE CASTRO**, reminded he remains under oath is further examined.

CASE # SCE243538

DEFENDANT: JAMES HENRY CUNNINGHAM **DATE: 1-5-05**

11:48 a.m. Jurors admonished and excused for luncheon recess until 1:15 p.m.

1:35 p.m. Court is again in session. All parties as previously noted and jurors are present. People call **WILLIAM BLOOMFIELD,** who is sworn and examined.

1:54 p.m. People call **STEPHEN PAZ, E.C.P.D.,** who is sworn and examined. **People's exhibit No. 4 – Brown paper bag containing shotgun shells is marked for identification.**

2:08 p.m. **People's exhibit No. 7 - Videotape taken from Stephen Paz's vehicle is marked for identification.** Videotape is shown to the jury.

2:10 p.m. Witness Stephen Paz gives explanation to the jury as tape is again shown to jury.

2:15 p.m. Jurors admonished and excused until 2:35 p.m. EC402 hearing is conducted. Stephen Paz is examined regarding the advisal of Miranda rights.

2:26 p.m. Brian Chase, E.C.P.D. is sworn and examined.

2:31 p.m. Stephen Paz resumes the stand.

2:36 p.m. Court finds that defendant was properly advised of his Miranda rights by Officer Paz. Court is in recess until 2:51 p.m., when Court is again in session. Jurors are now present. **STEPHEN PAZ, E.C.P.D.** is further examined.

3:02 p.m. **People's exhibit No. 8 – Videotape taken from Bryan Zmijewski's vehicle, E.C.P.D. is marked for identification.** Videotape is shown to the jury.

3:06 p.m. People call **BRIAN CHASE, E.C.P.D.**, who is sworn and examined.

3:12 p.m. People call **NINA TALAVERA,** who is sworn and examined.

3:21 p.m. Jurors admonished and excused for a break until 3:35 p.m. **It appearing that two exhibits were marked with the same number, Exhibits numbers are clarified on the record. Videotape taken from the Zmijewski vehicle is now exhibit No. 7; Videotape taken from the Paz vehicle is now exhibit 8; Tape of 911 call is now exhibit No. 9.**

3:43 p.m. Jurors are now present. People call **DEBORAH TEICH,** who is sworn and examined. **The following People's Exhibits are marked for identification:**

No. 5	**Steven s 20 Caliber rifle with serial number C816758**
No. 6	**Winchester 22 Caliber rifle with unknown serial number**

3:50 p.m. People's exhibits 1 through 9 are received into evidence. Jurors admonished and excused for evening recess until 1-6-05 at 9:15 a.m. Defendant remains in custody of the Sheriff with bail previously set in the sum of $126,600.00. Court is adjourned.

jn

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
El Cajon Branch

DATE: 1-6-05 DEPT: 9 REPORTER: I. PERKINS CSR#:12727

PRESENT: WILLIAM J. McGRATH, JUDGE

CLERK: J. NEAL PAGE 1 OF 2

BAILIFF: M. WAITE REPORTERS' ADDRESS: P.O. BOX 128
SAN DIEGO, CA 92112-410

CASE# SCE243538 **DDA# MAK333`**

People Of The State Of California,
Plaintiff **by: DAN LINK**
V.
JAMES HENRY CUNNINGHAM,
Defendant **by: STACY GULLEY**

9:33 a.m. Court convenes in the trial by jury continued from 1-5-05. The People are present represented by DDA Dan Link. The defendant is present in custody with bail previously set in the sum of $126,600.00 represented by Attorney Stacy Gulley. **TRAIL RESUMES** when twelve jurors and two alternate jurors are present. Stipulation regarding defendant's prior felony conviction is marked as Court's exhibit no. 2. Court reads the stipulation to the jury. People rest.

9:35 a.m. Jurors are released for a brief recess to allow defendant to be taken to the witness stand.

9:40 a.m. Jurors are again present. Defense calls **JAMES CUNNINGHAM,** who is sworn and examined.

10:48 a.m. Jurors admonished and excused for a break until 11:30 a.m. Counsel to appear at 11:00 a.m. Defendant waives his presence for discussion of jury instructions.

11:00 a.m. Court is again in session. Counsel present. Jury instructions are discussed.

12:15 p.m. Jurors admonished and excused for luncheon recess until 1:45 p.m., when Court is again in session. All parties are present. Defense submits proof of service of subpoena served on Sherry Robbins and requests that bench warrant be issued. Court orders bench warrant with bail set at $1,000.00.

1:50 p.m. Jurors are now present. DDA Dan Link presents closing argument on behalf of the People.

2:13 p.m. Attorney Stacy Gulley presents closing argument on behalf of the Defense.

2:23 p.m. DDA Dan Link presents final argument on behalf of the People.

CASE # SCE243538

DEFENDANT: JAMES CUNNINGHAM **DATE: 1-6-05**

2:30 p.m. The Court gives final instructions to the jury.

2:41 p.m. Case is submitted **(CONTESTED),** when Deputy Waite is sworn to take charge of the jury. Alternate jurors are placed on telephonic standby. Counsel stipulate that the jurors may recess without further admonition and without assembling in the jury box and that they may resume their deliberations with the bailiff's determination that all of the twelve jurors are present. Counsel further stipulate that they need not be notified prior to read back of testimony should it be requested by the jury and read back may take place in the jury room.

3:35 p.m. Jury requests to hear 911 tape. Bailiff takes tape and transcripts to the jury room until 3:40 p.m.

4:25 p.m. Jurors notified the bailiff that they have reached verdicts. Counsel notified to appear as soon as possible.

4:32 p.m. Court is again in session. All parties as previously noted are present. Out of the presence of the jury, defendant waives his right to a trial by jury as to priors. Court finds defendant gives a knowing, intelligent and explicit waiver of his right to jury trial.

TRIAL RESUMES, when the jurors are escorted into the courtroom by sworn bailiff. The clerk reads the verdicts:

DEFENDANT IS FOUND:

NOT GUILTY OF COUNT 1	**PC459/460/667.5(c)(21)/12022.5(a)**
GUILTY OF COUNT 2	**PC245(a)(2)/12022.5(a)**
GUILTY OF COUNT 3	**PC12021(a)(1)**
GUILTY OF COUNT 4	**PC12020(a)(1)**

At the request of defense, Court polls the jurors as to count 2. At the direction of the court, verdicts are recorded. Redacted copies of verdicts of which are attached hereto and incorporated. Original signed verdicts are sealed upon order of the Court. Jurors are released from their admonition and are thanked and excused from further service. Trial on priors is set for 1-10-05 at 8:30 a.m. in Department 9. Defendant remains in custody of the Sheriff with bail previously set in the sum of $126,600.00. Court is adjourned.

jn

SCE 243538 DA ____________

SUPERIOR COURT OF CALIF... NIA, COUNTY OF SAN DIEGO

APP. ON WARRANT 0112

DATE 1-10-05 AT ________ M.

PRESENT: HON WILLIAM J. McGRATH, JUDGE JUDGE PRESIDING DEPARTMENT 9

CLERK [signature] REPORTER Lori R. Ozbun, CSR# 12838 CSR# ____________

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

JUROR

THE PEOPLE OF THE STATE OF CALIFORNIA

________________________ DEPUTY DISTRICT ATTORNEY

________________________ ATTORNEY FOR DEFENDANT (PD/APD/PCC/RETAINED)

VIOLATION OF ____________

ALLEGATIONS ____________ INTERPRETER ____________ OATH ON FILE/SWORN

PRIORS ____________ LANGUAGE ____________

DEFENDANT ☐ PRESENT ☐ NOT PRESENT ☐ NOT PRODUCED

PR REV
☐ DEFENDANT ADVISED OF RIGHTS AND ADMITS/DENIES A VIOLATION OF PROBATION ____________. ☐ WAIVES HEARING.
PROBATION IS: FORMALLY/SUMMARILY ☐ REVOKED ☐ REINSTATED ☐ MODIFIED ☐ CONTINUED ☐ ST&C ☐ EXTENDED TO: ____________.

JUDGMENT
☐ WAIVES ARRAIGNMENT. ☐ ARRAIGNED FOR JUDGMENT. ☐ IMPOSITION/EXECUTION OF SENTENCE IS SUSPENDED. ☐ STIPULATED SENTENCE.
☐ PROBATION IS: ☐ DENIED ☐ GRANTED ________ YEARS (FORMAL/SUMMARY) TO EXPIRE ____________.
☐ COMMITMENT TO SHERIFF FOR ________ DAYS. STAYED TO: ____________. ☐ ADULT INST. RECOMMENDED. ☐ PAROLE NOT TO BE GRANTED.
☐ PERFORM ______ HRS/DAYS PSP/VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION/COURT BY ____________.
☐ FOURTH AMENDMENT WAIVER OF PERSON/AUTO/RESIDENCE/PERSONAL EFFECTS. ☐ SHORT TERM WORK FURLOUGH, REPORT: ____________.
☐ FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER. ☐ VEHICLE INTERLOCK DEVICE (VC 13386/23575).
☐ **DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY** ☐ PER WI 1737
☐ **DEFENDANT IS COMMITTED TO THE DEPARTMENT OF CORRECTIONS** ☐ PER PC 1170(d).
☐ FOR ______ LOWER/MIDDLE/UPPER TERM OF ________ YEARS/MONTHS/TO LIFE
ON COUNT ______ CODE & NO. ____________ ☐ PRINCIPAL COUNT.
☐ CIRCUMSTANCES IN MITIGATION/AGGRAVATION OUTWEIGH THOSE IN MITIGATION/AGGRAVATION.
☐ **NO VISITATION**, PER PC 1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES.

CREDIT FOR TIME SERVED
______ DAYS LOCAL
______ DAYS STATE INST.
______ DAYS PC 4019/2933.1
______ TOTAL DAYS CREDIT

☐ DEFENDANT IS ADVISED REGARDING PAROLE/APPEAL RIGHTS. ☐ **REGISTRATION** PER PC 290/HS 11590/PC 457.1/PC 186.30 ☐ **TESTING** PER PC 1202.1/PC 296.
☐ FINE OF $ ________ PLUS PENALTY ASSESSMENT.
☐ RESTITUTION FINE OF $ ________ PER PC 1202.4(b). ☐ FORTHWITH PER PC 2085.5.
☐ RESTITUTION FINE OF $ ________ PER PC 1202.45 SUSPENDED UNLESS PAROLE IS REVOKED.
☐ RESTITUTION TO VICTIM(S) PER P.O.'S REPORT/REST. FUND PER PC 1202.4(f) OF $ ________ /IN AN AMOUNT TO BE DETERMINED.
☐ AT $ ________ PER MONTH. ☐ COMBINED RATE. TO START 60 DAYS AFTER RELEASE/ON ____________ THROUGH REVENUE AND RECOVERY.
☐ DEFENDANT TO PAY PRE-PLEA INVESTIGATION AND REPORT PREPARATION COSTS. ☐ DEFENDANT TO PAY BOOKING FEES.
☐ REFERRED TO REVENUE AND RECOVERY. ☐ COURT APPOINTED ATTORNEY FEES ORDERED IN THE AMOUNT OF $ ____________.

CUST STAT
☐ DEFENDANT REMANDED TO CUSTODY OF SHERIFF. ☐ WITHOUT BAIL. ☐ WITH BAIL SET AT $ ____________.
☐ DEFENDANT ORDERED RELEASED FROM CUSTODY. ☐ ON PROBATION. ☐ ON OWN/SUPERVISED RECOGNIZANCE. ☐ ON DEJ. ☐ THIS CASE ONLY.
☐ DEFENDANT TO REMAIN AT LIBERTY. ☐ ON BOND POSTED $ ____________. ☐ ON PROBATION. ☐ ON DEJ. ☐ ON OWN/SUPERVISED RECOGNIZANCE.

FUT HRGS
☐ DEFENDANT WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT.
☐ DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION. ☐ PER PC 1203.03. ☐ PER WI 707.2.
____________ CONTINUED TO/SET FOR ____________ AT ________ M. IN DEPT. ________ ON MOTION OF COURT/DDA/DEFENDANT/PROBATION OFFICER. REASON:

BONDS WRRNTS
☐ BENCH WARRANT TO ISSUE, BAIL SET AT $ ____________. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ____________
☐ BENCH WARRANT ISSUED/ORDERED ____________ IS RECALLED/RESCINDED. RECALL WARRANT
☐ BAIL IS ☐ EXONERATED. ☐ FORFEITED. AMOUNT $ ____________. BOND NO. ____________.
BOND COMPANY ____________ AGENT ____________.

MH
☐ PROCEEDINGS SUSPENDED ☐ PER PC 1368, MENTAL COMPETENCY. (SEE BELOW FOR DATES OF EXAMINATION AND HEARING.)
☐ PER WI 3051, ADDICTION OR DANGER OF ADDICTION. (SEE BELOW FOR SERVICE DATE OF PETITION AND ORDER.)

OTHER
☐ SUPPLEMENTAL REPORT ORDERED. ☐ REPORT TO REGISTRAR OF VOTERS. ☐ DMV ABSTRACT. B.A.C. ______
☐ PROBATION TO SUBMIT POST-SENTENCE REPORT DIRECTLY TO THE D.O.C. PER PC 1203c.

Court finds in contempt of Court. Fine is imposed in the sum of $100.00. Costs for service of writ of attachment in the sum of $50.00 to be paid to SDSO. [signature]

JUDGE OF THE SUPERIOR COURT
WILLIAM J. McGRATH, JUDGE

SDSC CR-28(Rev. 12-01) CRIMINAL MINUTES - PRONOUNCEMENT OF JUDGEMENT

0113

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
El Cajon Branch

DATE: 1-10-05 DEPT: 9 REPORTER: L. OZBUN CSR#:12838

PRESENT: WILLIAM J. McGRATH, JUDGE

CLERK: J. NEAL PAGE 1 OF 1

BAILIFF: M. WAITE REPORTERS' ADDRESS: P.O. BOX 128
SAN DIEGO, CA 92112-410

CASE# SCE243538 **DDA# MAK333**

People Of The State Of California,
Plaintiff **by: DANIEL LINK**
V.
JAMES HENRY CUNNINGHAM,
Defendant **by: STACY GULLEY**

9:05 a.m. Court Convenes in the trial by court continued from 1-6-05. The People are present represented by DDA Daniel Link. The defendant is present in custody with bail previously set in the sum of $126.600.00 represented by Attorney Stacy Gulley. Defendant waives his right to a trial on priors and admits 1 prior PC 667(a)(1) and 1 prior PC 667(b) – (i). Court finds that defendant makes a knowing and intelligent waiver of his rights. See additional minutes attached.

jn

SCE243538 DA MAK333

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

JURY TRIAL 0114

DATE 1-10-05 AT ________ M.

PRESENT: HON WILLIAM J. MC GRATH JUDGE PRESIDING DEPARTMENT 9

CLERK J. NEAL REPORTER Lori R. Ozbun, CSR# 12838 CSR#

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA VS. D. LINK DEPUTY DISTRICT ATTORNEY

CUNNINGHAM, JAMES H. DEFENDANT

S. GULLEY ATTORNEY FOR DEFENDANT (PD/APD/PCC/RETAINED)

VIOLATION OF CT 2 PC 245(a)(2)/ PC 12022.5(a), CT 3 PC 12021(a)(1), CT 4 - PC 12020(a)(1) 1 PR PC667(a)(1), 1 PR PC667(b)-(i)

INTERPRETER ________ OATH ON FILE/SWORN

LANGUAGE ________

DEFENDANT ☑ PRESENT ☐ NOT PRESENT. TRIAL DATE ________ LATEST INFO./INDICT. FILED ________

READINESS

☐ CASE NOT NEGOTIABLE, TRIAL DATE IS CONFIRMED. ☐ TRIAL DATE REMAINS AS SET/VACATED. ☐ READINESS ☐ MOTIONS REMAIN AS SET/VACATED.

☐ DEFENDANT ADVISED OF RIGHTS, WAIVES RIGHTS. ☐ DEFT. SWORN & EXAMINED. ☐ DEFENDANT WITHDRAWS "NOT GUILTY" PLEA AND NOW PLEADS

☐ GUILTY ☐ NOLO CONTENDERE TO:

☐ PEOPLE V. WEST PLEA. ☐ COUNSEL & DEFENDANT STIPULATE TO PRELIMINARY/GRAND JURY TRANSCRIPT AS FACTUAL BASIS OF PLEA.

☐ ON MOTION OF COURT/DDA/DEFENDANT COUNT(S) ________ REMAINING IS/ARE DISMISSED FOJ/VOP.

☐ ON MOTION OF COURT/DDA/DEFENDANT ALLEGATION(S)/PRIOR(S) ________ REMAINING IS/ARE STRICKEN FOJ/VOP.

CUSTODY STATUS

☑ DEFENDANT REMANDED TO THE CUSTODY OF SHERIFF ☑ WITHOUT BAIL ☐ WITH BAIL SET AT $ ________.

☐ DEFENDANT ORDERED RELEASED FROM CUSTODY ☐ ON OWN/SUPERVISED RECOGNIZANCE ☐ CASE DISMISSED ☐ ACQUITTED. ☐ THIS CASE ONLY.

☐ DEFENDANT TO REMAIN AT LIBERTY ☐ ON BOND POSTED $ ________ ☐ ON OWN/SUPERVISED RECOGNIZANCE.

☐ BAIL IS SET AT/REDUCED TO/INCREASED TO $ ________.

FUT HRGS

☐ DEFT'S WAIVERS: ☐ STATUTORY TIME PRON. JUDGMENT/TRIAL ☐ HARVEY/ARBUCKLE ☐ PRESENCE AT POST-SENTENCE HEARING.

PHES IS SET FOR/CONT'D/TRAILED TO 2-8-05 AT 1:30PM

IN DEPARTMENT 9 ON MOTION OF COURT/DDA/DEFENDANT. DAYS LEFT ________.

☐ READINESS IS SET FOR/CONT'D TO ________ AT ________ IN DEPT. ________ MOTIONS DUE: ________

BONDS WRRNTS

☐ BENCH WARRANT TO ISSUE, BAIL SET AT $ ________. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ________.

☐ BENCH WARRANT ISSUED/ORDERED ________ IS RECALLED/RESCINDED.

☐ BAIL IS ☐ EXONERATED ☐ FORFEITED. AMOUNT $ ________. BOND NO. ________.

BOND COMPANY ________ AGENT ________.

☐ BAIL FORFEITURE OF ________ IS SET ASIDE/REINSTATED/EXONERATED. SURETY TO PAY $ ________ W/IN 30 DAYS.

JAN 20 2005
By: P. Bagby, Deputy

MH

☐ PROCEEDING SUSPENDED PER PC 1368. MENTAL COMPETENCY EXAMINATION ON ________ AT ________

IN ROOM 1003, PSYCHIATRIC EXAMINING FACILITY.

HEARING ON ________ AT ________ IN DEPARTMENT ________.

☐ THE SHERIFF IS ORDERED TO TRANSPORT DEFENDANT TO AND FROM THE EXAMINATION AND HEARING SHOWN ABOVE.

PROBTN REFRL

☑ REPORT ORDERED: ☑ PRESENTENCE ☐ POST-SENTENCE, COPY TO BE SENT DIRECTLY TO DEPT. OF CORRECTIONS PER PC 1203c.

☑ DEFENDANT FOUND GUILTY BY ☑ JURY VERDICT ☐ COURT FINDING. ☐ DEFT. WAIVES POST-SENTENCE INTERVIEW. (as to priors)

☐ DEFT. ORDERED TO REMAIN IN COURTROOM UNTIL INTERVIEWED BY COURT PROBATION OFFICER FOR A LIMITED REPORT.

☑ DEFENDANT REFERRED TO/ORDERED TO REPORT IMMEDIATELY TO PROBATION DEPT. BELOW FOR INTERVIEW:

☐ 330 W. BROADWAY, 5TH FL, SAN DIEGO ☐ 325 S. MELROSE, VISTA ☑ ~~1400~~ 250 E. MAIN, EL CAJON ☐ 1727 SWEETWATER, NATIONAL CITY.

OTHER:

SDSC CR-2C(Rev. 6-99) cc: Jail, Prob

JUDGE OF THE SUPERIOR COURT

CRIMINAL MINUTES - MISCELLANEOUS

ECS

SCE243538 DA MAK83301

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

☐ CENTRAL ☐ NORTH ☐ EAST ☐ SOUTH

DATE 02-08-05 AT 01:30 M. 04141108 PROB HEAR-SENTENCING

PRESENT: HON WILLIAM J. MCGRATH JUDGE PRESIDING DEPARTMENT 009 0115

CLERK J. NEAL REPORTER I. PERKINS CSR# 10727

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA D. LINK
DEPUTY DISTRICT ATTORNEY

VS.

CUNNINGHAM JAMES B - S. GULLEY
DEFENDANT ATTORNEY FOR DEFENDANT (PD / APD / PCC / RETAINED)

VIOLATION OF CT 1 #PC245(A)(2) / 12022.5(a) CT3 PC12021(A)(1) CT4 PC12021(A)(1) P.O. A. BROWN

ENH(S) INTERP. OATH ON FILE / SWN.

PRIOR(S) PC667(a)(1), PC667(b)-(i) LANGUAGE

DEFENDANT ☒ PRESENT ☐ NOT PRESENT ☐ NOT PRODUCED

PREV:
☐ DEFENDANT ADVISED OF RIGHTS AND ADMITS / DENIES A VIOLATION OF PROBATION ________ ☐ WAIVES HEARING.
PROBATION IS / REMAINS: FORMALLY / SUMMARILY ☐ REVKD ☐ REINST ☐ MODIFIED ☐ CONT ☐ ST&C ☐ TERMD. ☐ EXT. TO: ________

JUDGMENT:
☐ WAIVES ARRAIGNMENT. ☐ ARRAIGNED FOR JUDGMENT. ☐ IMPOSITION / EXECUTION OF SENTENCE IS SUSPENDED.
☐ PROBATION IS: ☐ DENIED ☐ GRANTED ________ YEARS (FORMAL/SUMMARY) TO EXPIRE ________.
☐ COMMITMENT TO SHERIFF FOR ________ DAYS. STAYED TO ________ / PNDG. SUCC. COMPL. OF PROB. ☐ PAROLE NOT TO BE GRANTED.
☐ PERFORM ________ HRS / DAYS PSP / VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION / COURT BY ________.
☐ 4TH AMENDMENT WAIVER ☐ FORMAL PROB. CONVERTS TO SUMM. PROB. ________.
☐ FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER. ☐ WORK FURLOUGH, REPORT: ________
☐ DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY ☐ PER WI 1737
☐ **DEFENDANT IS COMMITTED TO THE DEPARTMENT OF CORRECTIONS** ☐ PER PC 1170(d).
☐ FOR ________ LOWER / MIDDLE / UPPER / INDETERMINATE TERM OF ________ YEARS / MONTHS / TO LIFE
ON COUNT ________ CODE & NO. ________ ☐ PRINCIPAL COUNT. ☐ STIPULATED SENTENCE.
☐ DEFENDANT SENTENCED PER PC 667(b)-(i)/1170.12. ☐ NOTICE OF FIREARMS PROHIBITION GIVEN PER PC 12021.
☐ **NO VISITATION** PER PC 1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES.
☐ DEFT. ADVISED REGARDING PAROLE / APPEAL RIGHTS. ☐ **REGISTRATION** PER PC 290 / HS 11590 / PC 457.1 / PC 186.30. ☐ **TESTING** PER PC 1202.1 HIV / PC 296 DNA.
☐ DEFENDANT TO PAY: FINE OF $________ PLUS PENALTY ASSESSMENT. ☐ $20 COURT SECURITY FEE. ☐ PROBATION COSTS. ☐ BOOKING FEES.
REST. FINE(S): ☐ $________ PER PC 1202.4(b). ☐ FORTHWITH PER PC 2085.5. ☐ $________ PER PC 1202.45 SUSP. UNLESS PAROLE REVKD.
☐ RESTITUTION TO VICTIM(S) PER P.O.'S REPORT / REST. FUND PER PC 1202.4(f) OF $________ / IN AN AMT. TO BE DETERMINED. ☐ JOINT & SEVERAL.
☐ COURT-APPOINTED ATTORNEY FEES ORDERED IN THE AMOUNT OF $________.
☐ INCOME DEDUCTION ORDER OF $________ PER PAY PERIOD PER PC 1202.42 STAYED UNLESS DEFT. FAILS TO PAY VICTIM REST. NOTICE OF RIGHTS PROVIDED.
☐ AT THE COMBINED RATE OF $________ PER MONTH TO START 60 DAYS AFTER RELEASE / ON ________.
☐ DEFENDANT IS REFERRED TO ☐ REVENUE & RECOVERY ☐ COURT COLLECTIONS TO SET UP AN ACCOUNT.
☐ DEFENDANT IS TO REPORT TO PROBATION / REV. & REC/ COURT COLLECTIONS FORTHWITH / WITHIN 72 HOURS OF RELEASE FROM CUSTODY.

CREDIT FOR TIME SERVED
________ DAYS LOCAL
________ DAYS STATE INST.
________ DAYS PC 4019 / 2933.1
________ TOTAL DAYS CREDIT

CUST STAT:
☒ DEFENDANT REMANDED TO CUSTODY OF SHERIFF ☒ WITHOUT BAIL. ☐ WITH BAIL SET AT $________.
☐ DEFENDANT TO REMAIN AT LIBERTY ☐ ON BOND POSTED $________. ☐ ON PROBATION. ☐ ON DEJ. ☐ ON OWN / SUPERVISED RECOGNIZANCE.
☐ DEFENDANT ORDERED RELEASED FROM CUSTODY ☐ ON PROBATION. ☐ ON OWN / SUPERVISED RECOGNIZANCE. ☐ ON DEJ. ☐ THIS CASE ONLY.

FUT HRGS:
☒ DEFENDANT WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT.
☐ DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION. ☐ PER PC 1203.03. ☐ PER WI 707.2
PH&S CONTINUED TO / SET FOR 3-9-05 AT 1:30P M. IN DEPT. 9 ON MOTION
OF COURT / DDA / DEFENDANT / PROBATION OFFICER. REASON: Fur. Invest.

BONDS WRRNTS:
☐ BENCH WARRANT TO ISSUE, BAIL SET AT $________. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ________.
☐ BENCH WARRANT ISSUED / ORDERED ________ IS RECALLED / RESCINDED.
☐ BAIL IS ☐ EXONERATED. ☐ FORFEITED. AMOUNT $________. BOND NO. ________
BOND COMPANY ________ AGENT ________

F I L E D
Clerk of the Superior Court
FEB 09 2005
By: J. FRANCOEUR, Deputy

MH:
☐ PROCEEDINGS SUSPENDED ☐ PER **PC 1368**, MENTAL COMPETENCY. (SEE BELOW FOR DATES OF EXAMINATION AND HEARING.)
☐ PER **WI 3051**, ADDICTION OR DANGER OF ADDICTION. SERVICE OF PETITION: ________

OTHER:
☐ PROBATION TO PREPARE SUPP. REPT. / SUBMIT POST-SENT REPT TO CDC PER PC1203c. ☐ REPT. TO REG. OF VOTERS. ☐ DMV ABSTRACT. B.A.C. ________
☐ CONCURRENT WITH / CONSECUTIVE TO:

jmt JF

[signature]
JUDGE OF THE SUPERIOR COURT

SDSC CR-2B(Rev. 9-03) CRIMINAL MINUTES - PRONOUNCEMENT OF JUDGEMENT

ECS

CUST w/o BAIL

SCE243538 DA MAK33301

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

☐ CENTRAL ☐ NORTH ☐ EAST ☐ SOUTH

DATE 03-09-05 AT 01:30 M. 04141108 PROB HEAR-SENTENCING

0116

PRESENT: HON WILLIAM J. MCGRATH JUDGE PRESIDING DEPARTMENT 009

CLERK J NEAL REPORTER TAMELA ERVIN CSR 9685 CSR#

REPORTER'S ADDRESS: P.O. BOX 120128, SAN DIEGO, CA 92112-0128

THE PEOPLE OF THE STATE OF CALIFORNIA D. LINK

DEPUTY DISTRICT ATTORNEY

VS.

CUNNINGHAM JAMES M B - S.GULLEY

DEFENDANT ATTORNEY FOR DEFENDANT (PD) APD / PCC / RETAINED)

VIOLATION OF Ct2 *PC245(A)(2) / 12022.5(a) CT3 PC12021(A)(1 CT4 PC12021(A)(1 P.O. B MARDER

ENH(S) INTERP. OATH ON FILE / SWN.

PRIOR(S) PC 667(a)(1), PC 667(b)-(i) LANGUAGE

DEFENDANT ☑ PRESENT ☐ NOT PRESENT ☐ NOT PRODUCED

PREV
☐ DEFENDANT ADVISED OF RIGHTS AND ADMITS / DENIES A VIOLATION OF PROBATION ______. ☐ WAIVES HEARING.
PROBATION IS / REMAINS: FORMALLY / SUMMARILY ☐ REVKD ☐ REINST ☐ MODIFIED ☐ CONT ☐ ST&C ☐ TERMD. ☐ EXT. TO: ______.

JUDGMENT
☒ WAIVES ARRAIGNMENT. ☐ ARRAIGNED FOR JUDGMENT. ☐ IMPOSITION / EXECUTION OF SENTENCE IS SUSPENDED.
☒ PROBATION IS: ☒ DENIED ☐ GRANTED ______ YEARS (FORMAL/SUMMARY) TO EXPIRE ______.
☐ COMMITMENT TO SHERIFF FOR ______ DAYS. STAYED TO ______ / PNDG. SUCC. COMPL. OF PROB. ☐ PAROLE NOT TO BE GRANTED.
☐ PERFORM ______ HRS / DAYS PSP / VOL. WORK AT NONPROFIT ORG. SUBMIT PROOF TO PROBATION / COURT BY ______.
☐ 4TH AMENDMENT WAIVER ☐ FORMAL PROB. CONVERTS TO SUMM. PROB. ______.
☐ FURTHER CONDITIONS ARE SET FORTH IN PROBATION ORDER. ☐ WORK FURLOUGH, REPORT: ______
☐ DEFENDANT IS COMMITTED TO THE CALIFORNIA YOUTH AUTHORITY ☐ PER WI 1737
☐ DEFENDANT IS COMMITTED TO THE DEPARTMENT OF CORRECTIONS ☐ PER PC 1170(d).
☒ FOR LOWER / MIDDLE / UPPER / INDETERMINATE TERM OF 4 (YEARS) / MONTHS / TO LIFE
ON COUNT 2 CODE & NO. PC 245(a)(2) ☐ PRINCIPAL COUNT. ☐ STIPULATED SENTENCE.
☒ DEFENDANT SENTENCED PER PC 667(b)-(i)/1170.12. ☐ NOTICE OF FIREARMS PROHIBITION GIVEN PER PC 12021.
☐ NO VISITATION PER PC 1202.05. VICTIM IS UNDER 18 YRS. OF AGE. DA TO COMPLY WITH NOTICES.
☒ DEFT. ADVISED REGARDING PAROLE / APPEAL RIGHTS. ☐ REGISTRATION PER PC 290 / HS 11590 / PC 457.1 / PC 186.30. ☑ TESTING PER PC 1202.1 HIV / PC 296 DNA.
☒ DEFENDANT TO PAY: FINE OF $ 1000 PLUS PENALTY ASSESSMENT. ☐ $20 COURT SECURITY FEE. ☐ PROBATION COSTS. ☐ BOOKING FEES.
REST. FINE(S): $ 1000 – PER PC 1202.4(b). ☐ FORTHWITH PER PC 2085.5. $ 1000 – PER PC 1202.45 SUSP. UNLESS PAROLE REVKD.
☐ RESTITUTION TO VICTIM(S) PER P.O.'S REPORT / REST. FUND PER PC 1202.4(f) OF $ ______ / IN AN AMT. TO BE DETERMINED. ☐ JOINT & SEVERAL.
☐ COURT-APPOINTED ATTORNEY FEES ORDERED IN THE AMOUNT OF $ ______.
☐ INCOME DEDUCTION ORDER OF $ ______ PER PAY PERIOD PER PC 1202.42 STAYED UNLESS DEFT. FAILS TO PAY VICTIM REST. NOTICE OF RIGHTS PROVIDED.
☐ AT THE COMBINED RATE OF $ ______ PER MONTH TO START 60 DAYS AFTER RELEASE / ON ______.
☐ DEFENDANT IS REFERRED TO ☐ REVENUE & RECOVERY ☐ COURT COLLECTIONS TO SET UP AN ACCOUNT.
☐ DEFENDANT IS TO REPORT TO PROBATION / REV. & REC/ COURT COLLECTIONS FORTHWITH / WITHIN 72 HOURS OF RELEASE FROM CUSTODY.

CREDIT FOR TIME SERVED
178 DAYS LOCAL
DAYS STATE INST.
26 DAYS PC 4019 / 2933.1
204 TOTAL DAYS CREDIT

CUST STAT
☒ DEFENDANT REMANDED TO CUSTODY OF SHERIFF ☒ WITHOUT BAIL. ☐ WITH BAIL SET AT $ ______.
☐ DEFENDANT TO REMAIN AT LIBERTY ☐ ON BOND POSTED $ ______. ☐ ON PROBATION. ☐ ON DEJ. ☐ ON OWN / SUPERVISED RECOGNIZANCE.
☐ DEFENDANT ORDERED RELEASED FROM CUSTODY ☐ ON PROBATION. ☐ ON OWN / SUPERVISED RECOGNIZANCE. ☐ ON DEJ. ☐ THIS CASE ONLY.

FUT HRGS
☐ DEFENDANT WAIVES STATUTORY TIME FOR PRONOUNCEMENT OF JUDGMENT.
☐ DEFENDANT REFERRED FOR DIAGNOSTIC EVALUATION. ☐ PER PC 1203.03. ☐ PER WI 707.2.
______ CONTINUED TO / SET FOR ______ AT ______ M. IN DEPT. ______ ON MOTION
OF COURT / DDA / DEFENDANT / PROBATION OFFICER. REASON:

BONDS WRNTS
☐ BENCH WARRANT TO ISSUE, BAIL SET AT $ ______. ☐ SERVICE FORTHWITH. ☐ ORDERED WITHHELD TO ______.
☐ BENCH WARRANT ISSUED / ORDERED ______ IS RECALLED / RESCINDED.
☐ BAIL IS ☐ EXONERATED. ☐ FORFEITED. AMOUNT $ ______. BOND NO. ______
BOND COMPANY ______ AGENT ______

Total term 12 years

MH
☐ PROCEEDINGS SUSPENDED ☐ PER PC 1368, MENTAL COMPETENCY. (SEE BELOW FOR DATES OF EXAMINATION AND HEARING.)
☐ PER WI 3051, ADDICTION OR DANGER OF ADDICTION. SERVICE OF PETITION: ______.

OTHER
☐ PROBATION TO PREPARE SUPP. REPT. / SUBMIT POST-SENT REPT TO CDC PER PC1203c. ☐ REPT. TO REG. OF VOTERS. ☐ DMV ABSTRACT. B.A.C. ______
☐ CONCURRENT WITH / CONSECUTIVE TO:

Witness warrant is recalled. Sherry Robbins present addresses the Court
PC 12022.5(a) - 3 yrs lower term consecutive
CT 3 - 32 months ~~consecutive~~ (lower term) concurrent
CT 4 - 32 months Stayed per PC 654
PC 667(a)(1) - 5 years Consecutive

WILLIAM J. McGRATH JUDGE OF THE SUPERIOR COURT

SDSC CR-2B (Rev. 9-03) CRIMINAL MINUTES - PRONOUNCEMENT OF JUDGEMENT